

Memorandum 82-91

Subject: Study L-625 - Probate Law and Procedure (Comprehensive Statute  
Relating to Wills and Intestate Succession and Comments)

The staff has gone through the proposed legislation relating to wills and intestate succession. We have made a number of substantive and technical revisions. These revisions will be noted in other memoranda prepared for the September meeting.

Attached to this memorandum are the following materials:

(1) The text of the new comprehensive statute relating to wills and intestate succession (white pages).

(2) The Comments to the new comprehensive statute relating to wills and intestate succession (green pages).

(3) The text of the conforming amendments, additions, and repeals of other code provisions (yellow pages).

(4) The Comments to the amendments, additions, and repeals (pink pages).

We propose to print the material after making such revisions as the Commission decides to make at the September meeting. Accordingly, you should read through the attached material with care prior to the meeting. Raise any technical or substantive matters in connection with the material at the meeting.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

## PART 1. PRELIMINARY PROVISIONS

1. This code shall be known as the Probate Code.

2. (a) The provisions of this code, insofar as they are substantially the same as previously existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

(b) A provision of this code, insofar as it is the same in substance as a provision of the Uniform Probate Code, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision of the Uniform Probate Code.

3. Except as otherwise specifically provided, Chapters 1 (commencing with Section 110.010), 3 (commencing with Section 111.010), 5 (commencing with Section 113.010), and 6 (commencing with Section 114.010) of Part 3 of Division 1, and Division 2 (commencing with Section 200.010), do not apply in any case where the decedent died before January 1, 1985, and such case continues to be governed by the law applicable to the case prior to January 1, 1985.

4. Division, part, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

5. If a notice or other communication is required by this code to be mailed by registered mail, the mailing of the notice or other communication by certified mail is deemed to be a sufficient compliance with the requirements of law.

6. Unless the provision or context otherwise requires, these general provisions and rules of construction govern the construction of this code.

7. Whenever a reference is made to any portion of this code or to any other law, the reference applies to all amendments and additions heretofore or hereafter made.

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

9. The present tense includes the past and future tenses, and the future, the present.

10. The singular number includes the plural, and the plural, the singular.

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

12. "Shall" is mandatory and "may" is permissive.

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PART 2. WORDS AND PHRASES DEFINED

100.010. Unless the provision or context otherwise requires, the words and phrases defined in this part govern the construction of Divisions 1 (commencing with Section 1) and 2 (commencing with Section 200.010).

100.015. "Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, and other like arrangement.

100.020. "Annulment of marriage" includes adjudication of nullity of marriage.

100.030. "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

100.040. "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a step-child, a foster child, a grandchild, or any more remote descendant.

100.060. As used in this code, "community property" includes:

(a) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person while domiciled elsewhere, that is community property, or a substantially equivalent type of marital property, under

the laws of the place where the acquiring spouse was domiciled at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired during the marriage by a married person in exchange for real or personal property, wherever situated, that is community property, or a substantially equivalent type of marital property, under the laws of the place where the acquiring spouse was domiciled at the time the property so exchanged was acquired.

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100.090. "Devise," when used as a noun, means a disposition of real or personal property by will, and, when used as a verb, means to dispose of real or personal property by will.

100.100. (a) "Devisee" means any person designated in a will to receive a devise.

(b) In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

100.110. "Dissolution of marriage" includes divorce.

100.130. "Family allowance" means an allowance provided for in Chapter 4 (commencing with Section 252.010) of Part 3 of Division 2.

100.140. "Family maintenance" means maintenance provided for in Chapter 5 (commencing with Section 253.010) of Part 3 of Division 2.

100.150. "Financial institution" means a state or national bank, state or federal savings and loan association or credit union, or like organization.

100.190. "Heirs" means the persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

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100.220. (a) Subject to subdivision (b), "interested person" includes any of the following:

(1) An heir, devisee, child, spouse, creditor, beneficiary, and any other person having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding.

(2) Any person having priority for appointment as personal representative.

(3) A fiduciary representing an interested person.

(b) The meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

100.230. "Issue" of a person means all his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent.

100.300. "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

100.310. "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or other entity.

100.320. "Personal property" does not include a leasehold interest in real property.

100.340. "Probate homestead" means a homestead provided for in Chapter 3 (commencing with Section 251.010) of Part 3 of Division 2.

100.350. "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

100.380. As used in this code, "quasi-community property" means the following property, other than community property as defined in Section 100.060:

(a) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired by a decedent while domiciled elsewhere that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time of its acquisition.

(b) All personal property wherever situated, and all real property situated in this state, heretofore or hereafter acquired in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the property so exchanged was acquired.

100.390. "Real property" includes a leasehold interest in real property.

100.400. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate

of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

100.430. "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

100.470. "Surviving spouse" does not include any of the following:

(a) A person whose marriage to the decedent has been dissolved or annulled, unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.

(b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they (1) subsequently participate in a marriage ceremony purporting to marry each to the other or (2) subsequently live together as husband and wife.

(c) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent, participates in a marriage ceremony with a third person.

(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

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100.480. "Totten trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sums on deposit in the account. In a Totten trust account, it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A Totten trust account does not include (1) a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account or (2) a fiduciary account arising from a fiduciary relation such as attorney-client.

100.490. "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, guardianships, conservatorships, personal representatives, Totten trust accounts, custodial arrangements pursuant to the Uniform Gifts to Minors Act of any state, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

100.500. "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

100.520. "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

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### PART 3. GENERAL PROVISIONS

#### CHAPTER 1. EFFECT OF DEATH OF MARRIED PERSON ON COMMUNITY AND QUASI-COMMUNITY PROPERTY

110.010. Upon the death of a married person, one-half of the community property belongs to the surviving spouse and the other half belongs to the decedent.

110.020. Upon the death of a married person domiciled in this state, one-half of the decedent's quasi-community property belongs to the surviving spouse and the other half belongs to the decedent.

110.030. If a married person dies domiciled in this state who has made a transfer to a person other than the surviving spouse, without receiving in exchange a consideration of substantial value, of property in which the surviving spouse had an expectancy under Section 110.020 at the time of the transfer, the surviving spouse may require the transferee to restore to the decedent's estate one-half of such property, its value, or its proceeds, if the decedent had a substantial quantum of ownership or control of the property at death. All property restored to the decedent's estate under this section belongs to the surviving spouse pursuant to Section 110.020 as though the transfer had not been made.

110.040. Except as provided by Section 114.050, if a husband and wife die leaving community or quasi-community property and it cannot be established that one spouse survived the other by 120 hours:

(a) One-half of the community property and one-half of the quasi-community property shall be administered upon or distributed, or otherwise dealt with, as if one spouse had survived and as if that half belonged to that spouse.

(b) The other half of the community property and the other half of the quasi-community property shall be administered upon or distributed, or otherwise dealt with, as if the other spouse had survived and as if that half belonged to that spouse.

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110.050. Notwithstanding Section 110.010, community property held in a revocable trust described in Section 5113.5 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

CHAPTER 2. SURVIVING SPOUSE'S RIGHT IN CALIFORNIA  
REAL PROPERTY OF NONDOMICILIARY DECEDENT

110.510. If a married person dies not domiciled in this state and leaves a valid will disposing of real property in this state which is not the community property of the decedent and the surviving spouse, the

surviving spouse has the same right to elect to take a portion of or interest in such property against the will of the decedent as though the property were situated in the decedent's domicile at death.

CHAPTER 3. CONTRACTUAL ARRANGEMENTS RELATING TO  
RIGHTS AT DEATH

Article 1. Surviving Spouse's Waiver of Rights

111.010. As used in this article, "waiver" means a waiver by the surviving spouse of any of the rights listed in subdivision (a) of Section 111.020, whether executed before or during marriage.

111.020. (a) The right of a surviving spouse to any of the following may be waived in whole or in part by a waiver under this article:

- (1) Property that would pass from the decedent by intestate succession.
- (2) Property that would pass from the decedent by testamentary disposition in a will executed before the waiver.
- (3) A probate homestead.
- (4) The right to have exempt property set aside.
- (5) Family allowance.
- (6) Family maintenance.
- (7) The right to have an estate set aside under Article 2 (commencing with Section 640) of Chapter 10 of Division 3.
- (8) The right to elect to take community or quasi-community property against the decedent's will.
- (9) The right to take the statutory share of an omitted spouse.
- (10) The right to be appointed as the executor or administrator of the decedent's estate.

(b) Nothing in this article affects or limits the waiver or manner of waiver of rights other than those referred to in subdivision (a), including but not limited to the right to property that would pass from the decedent to the surviving spouse by non-probate transfer upon the death of the decedent, such as the survivorship interest under a joint tenancy, a Totten trust account, or a payable-on-death account.

111.030. A waiver under this article shall be in writing and shall be signed by the surviving spouse.

111.040. A waiver that complies with Section 111.030 is enforceable unless the court determines either of the following:

(a) A full and complete disclosure of the property of the decedent was not provided to the surviving spouse prior to the execution of the waiver.

(b) The surviving spouse was not represented by independent legal counsel at the time of execution of the waiver.

111.050. (a) Except as provided in subdivision (b), a waiver that complies with Section 111.030 but is not enforceable under Section 111.040 is enforceable if the court determines either of the following:

(1) The waiver at the time of execution made a fair and reasonable disposition of the rights of the surviving spouse and the surviving spouse understood the effect of and voluntarily executed the waiver.

(2) The surviving spouse had, or reasonably should have had, an adequate knowledge of the property of the decedent and understood the effect of and voluntarily executed the waiver.

(b) If, after considering all relevant facts and circumstances, the court finds that enforcement of the waiver pursuant to subdivision (a) would be unconscionable under the existing facts and circumstances, the court may refuse to enforce the waiver, enforce the remainder of the waiver without the unconscionable provisions, or limit the application of the unconscionable provisions to avoid an unconscionable result.

111.060. Unless the waiver or property settlement provides to the contrary, a waiver under this article of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse, or a complete property settlement entered into after or in anticipation of separation or dissolution or annulment of marriage, is a waiver by the spouse of the rights described in subdivision (a) of Section 111.020 and Section 204.050 does not apply.

111.070. (a) As used in this section, "agreement" means a written agreement signed by each spouse or prospective spouse altering, amending, or revoking a waiver under this article.

(b) A waiver under this article may not be altered, amended, or revoked except by a subsequent written agreement signed by each spouse or prospective spouse.

(c) An agreement is enforceable against a party to the agreement unless the court determines either of the following:

(1) A full and complete disclosure of the property of the other spouse was not provided to the spouse against whom enforcement is sought prior to the execution of the agreement.

(2) The spouse against whom enforcement is sought was not represented by independent legal counsel at the time of execution of the agreement.

(d) Except as provided in subdivision (e), an agreement that is not enforceable under subdivision (c) is enforceable if the court determines that the agreement at the time of execution made a fair and reasonable disposition of the rights of the spouses and the spouse against whom the agreement is sought to be enforced understood the effect of and voluntarily executed the agreement.

(e) If, after considering all relevant facts and circumstances, the court finds that enforcement of the agreement pursuant to subdivision (d) would be unconscionable under the existing facts and circumstances, the court may refuse to enforce the agreement, enforce the remainder of the agreement without the unconscionable provisions, or limit the application of the unconscionable provisions to avoid an unconscionable result.

111.080. Nothing in this article affects the validity or effect of any waiver, agreement, or property settlement made prior to January 1, 1985, and the validity and effect of such waiver, agreement, or property settlement shall continue to be determined by the law applicable to the waiver, agreement, or settlement prior to January 1, 1985.

Article 2. Contracts Concerning Will  
or Succession

111.110. (a) A contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if executed after December 31, 1984, can be established only by one of the following:

- (1) Provisions of a will stating material provisions of the contract.
- (2) An express reference in a will to a contract and extrinsic evidence proving the terms of the contract.
- (3) A writing signed by the decedent evidencing the contract.

(b) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

Article 3. Provisions in Written Instruments

111.210. (a) Any of the following provisions in an insurance policy, contract of employment, bond, mortgage, promissory note, deposit agreement, pension or profit-sharing plan, trust agreement, conveyance or any other written instrument effective as a contract, gift, conveyance, or trust is not invalid because the instrument does not comply with the requirements for execution of a will, and this code does not invalidate the instrument or any of the following provisions:

(1) That money or other benefits theretofore due to, controlled by, or owned by a decedent shall be paid after the decedent's death to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(2) That any money due or to become due under the instrument shall cease to be payable in event of the death of the promisee or the promisor before payment or demand.

(3) That any property which is the subject of the instrument shall pass to a person designated by the decedent in either the instrument or a separate writing, including a will, executed at the same time as the instrument or subsequently.

(b) Nothing in this section limits the rights of creditors under any other law.

## CHAPTER 5. EFFECT OF HOMICIDE

113.010. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under the will of the decedent, including any general or special power of appointment conferred by the will on the killer and any nomination of the killer as executor, trustee, or guardian made by the will.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent's quasi-community property the killer would otherwise acquire under Section 110.020 or 110.030 upon the death of the decedent.

(4) Any property of the decedent under Part 3 (commencing with Section 250.010) or Part 4 (commencing with Section 260.010) of Division 2.

(b) In the cases covered by subdivision (a):

(1) The estate of the decedent passes as if the killer had predeceased the decedent and Section 204.050 does not apply.

(2) Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent and Section 1389.4 of the Civil Code does not apply.

(3) Provisions of the will of the decedent nominating the killer as executor, trustee, or guardian shall be interpreted as if the killer had predeceased the decedent.

113.020. A joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as the decedent's property and the killer has no rights by survivorship. This section applies to joint tenancies in real and personal property, joint and multiple-party accounts in financial institutions, and any other form of co-ownership with survivorship incidents.

113.030. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills

the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.

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113.040. In any case not described in Section 113.010, 113.020, or 113.030 in which one person feloniously and intentionally kills another, any acquisition of property, interest, or benefit by the killer as a result of the killing of the decedent shall be treated in accordance with the principles of this chapter.

113.050. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this chapter. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this chapter.

113.060. This chapter does not affect the rights of any person who, before rights under this chapter have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this chapter, but the killer is liable for the amount of the proceeds or the value of the property.

113.070. An insurance company, financial institution, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this chapter unless prior to payment it has received at its home office or principal address written notice of a claim under this chapter.

## CHAPTER 6. REQUIRED PERIOD OF SURVIVAL TO TAKE AS SURVIVOR

Article 1. 120-Hour Survival Rule

114.010. Except as otherwise provided in this article, if the title to property or the devolution of property depends upon priority of death and it cannot be established that one of the persons survived the other by 120 hours, the property of each person shall be administered upon or distributed, or otherwise dealt with, as if that person had survived the other.

114.020. (a) This article does not apply in any case where Section 110.040, 204.030, 204.050, or 220.040 applies.

(b) This article does not apply in the case of a trust, deed, or contract of insurance, or any other situation, where (1) provision is made dealing explicitly with simultaneous deaths or deaths in a common disaster or otherwise providing for distribution of property different from the provisions of this article or (2) provision is made requiring one person to survive another for a stated period in order to take property or providing for a presumption as to survivorship that results in a distribution of property different from that provided by this article.

114.030. (a) If property is so disposed of that the right of a beneficiary to succeed to any interest in the property is conditional upon surviving another person and it cannot be established that the beneficiary survived the other person by 120 hours, the beneficiary is deemed not to have survived the other person.

(b) If property is so disposed of that one of two or more beneficiaries would have been entitled to the property if he or she had survived the others, and it cannot be established that any beneficiary survived any other beneficiary by 120 hours, the property shall be divided into as many equal portions as there are beneficiaries and the portion of each beneficiary shall be administered upon or distributed, or otherwise dealt with, as if that beneficiary had survived the other beneficiaries.

114.040. (a) As used in this section, "joint tenants" includes owners of property held under circumstances that entitled one to the whole of the property on the death of the other or others.

(b) If property is held by two joint tenants and both of them have died and it cannot be established that one survived the other by 120 hours, the property held in joint tenancy shall be administered upon or distributed, or otherwise dealt with, one-half as if one joint tenant had survived and one-half as if the other joint tenant had survived.

(c) If property is held by more than two joint tenants and all of them have died and it cannot be established that any of them survived the others by 120 hours, the property held in joint tenancy shall be divided into as many portions as there are joint tenants and the share of each joint tenant shall be administered upon or distributed, or otherwise dealt with, as if that joint tenant had survived the other joint tenants.

(d) Nothing in this article limits or affects any right a joint tenant or other person may have to withdraw funds from a joint account or other multiple-party account in a financial institution, whether or not the person making the withdrawal has at the time of withdrawal survived another party to the account by 120 hours.

114.050. (a) If the insured and a beneficiary under a policy of life or accident insurance have died and it cannot be established that the beneficiary survived the insured by 120 hours, the proceeds of the policy shall be administered upon or distributed, or otherwise dealt with, as if the insured had survived the beneficiary.

(b) If the insured and the beneficiary are married to each other, this section applies regardless of whether the policy is community, quasi-community, or separate property.

(c) This section does not apply to an insurance policy issued prior to January 1, 1985, and any such insurance policy continues to be governed by the law applicable to the policy prior to January 1, 1985.

Article 2. Proceedings to Determine Survival

114.510. A petition may be filed under this article for any one or more of the following purposes:

(a) To determine whether one person survived another for the period of time specified in Section 110.040, 114.010, 114.030, 114.040, 114.050, 204.030, 204.050, or 220.040.

(b) To determine for the purposes of Section 1389.4 of the Civil Code whether issue of an appointee survived the donee for the period of time specified in that section.

(c) To determine for the purposes of Section 24606 of the Education Code whether a person has survived for the period of time required to receive benefits payable under the system.

(d) To determine for the purposes of Section 21371 of the Government Code whether a person has survived for the period of time required to receive money payable under the system.

(e) To determine for the purposes of a case governed by the law in effect prior to January 1, 1985, whether persons have died other than simultaneously.

114.520. A petition may be filed under this article by any of the following:

(a) The executor or administrator of any person the priority of whose death is in issue under the applicable provision referred to in Section 114.510.

(b) Any other person interested in the estate of any such person.

114.530. (a) The petition shall be filed in the estate proceeding in which the person filing the petition received his or her appointment or in the estate proceeding for the estate in which the person filing the petition claims an interest.

(b) The court that first acquires jurisdiction under this section has exclusive jurisdiction for the purposes of this article.

114.540. The clerk shall set the petition for hearing by the court. At least 10 days before the date set for the hearing of the petition by the court, the petitioner shall cause notice of the hearing of the petition to be personally served on the executor or administrator of each other person the priority of whose death is in issue or to their attorneys if they have appeared by attorney in the estate proceeding. If the representative of any such other person is also the petitioner then, in lieu of personal service upon him or her, the notice of hearing shall be mailed to the heirs and devisees of such other person, so far as they are known to the petitioner, at least 10 days before the date of the hearing. Proof of giving of notice as required by this section shall be made at or before the hearing.

114.550. At the hearing, the court shall hear the petition and any objections to the petition that may have been filed or presented. If the court determines that the named persons are dead and that it has not been established that one person survived another by the applicable period of time, the court shall make an order to that effect. If the court determines that the named persons are dead and that one person survived another by the applicable period of time, the court shall make an order setting forth the order in which the persons died. The order, when it becomes final, is a binding determination of the facts set forth in the order and is conclusive as against the personal representatives of the deceased persons named in the order and against all persons claiming by, through, or under any of the deceased persons.

## DIVISION 2. WILLS AND INTESTATE SUCCESSION

### PART 1. WILLS

#### CHAPTER 1. GENERAL PROVISIONS

200.010. An individual 18 or more years of age who is of sound mind may make a will.

200.020. A will may dispose of the following property:

- (a) The testator's separate property.
- (b) The one-half of the community property that belongs to the testator under Section 110.010.
- (c) The one-half of the testator's quasi-community property that belongs to the testator under Section 110.020.

200.030. A will may make a disposition of property to any person, including but not limited to any of the following:

- (a) An individual.
- (b) A corporation.
- (c) An unincorporated association, society, lodge, or any branch thereof.
- (d) A county, city, city and county, or any municipal corporation.
- (e) Any state, including this state.
- (f) The United States or any instrumentality thereof.
- (g) A foreign country or a governmental entity therein.

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## CHAPTER 2. EXECUTION OF WILLS

201.010. Except as provided in this part, a will shall be in writing and satisfy both of the following requirements:

(a) The will shall be signed either (1) by the testator or (2) in the testator's name by some other person in the testator's presence and by the testator's direction.

(b) The will shall be signed by at least two persons each of whom witnessed either (1) the signing of the will by the testator or (2) the testator's acknowledgment either that the testator signed the will or that the will is the testator's will.

201.020. (a) A will that does not comply with Section 201.010 is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(b) If a holographic will does not contain a statement as to the date of its execution and:

(1) If the omission results in doubt as to whether its provisions or the inconsistent provisions of another will are controlling, the holographic will is invalid to the extent of the inconsistency unless the time of its execution is established to be after the date of execution of the other will.

(2) If it is established that the testator lacked testamentary capacity at any time during which the will might have been executed, the will is invalid unless it is established that it was executed at a time when the testator had testamentary capacity.

201.030. (a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested witness.

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201.040. A written will is valid if its execution complies with any of the following:

(a) The will is executed in compliance with Section 201.010 or 201.020 or Chapter 6 (commencing with Section 205.010) or Chapter 12 (commencing with Section 210.010).

(b) The execution of the will complies with the law at the time of execution of the place where the will is executed.

(c) The execution of the will complies with the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national.

### CHAPTER 3. REVOCATION AND REVIVAL

202.010. A will or any part thereof is revoked by any of the following:

(a) A subsequent will which revokes the prior will or part expressly or by inconsistency.

(b) Being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator

or (2) another person in the testator's presence and by the testator's direction.

202.020. A will executed in duplicate is revoked if one of the duplicates is burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by either (1) the testator or (2) another person in the testator's presence and by the testator's direction.

4781

202.030. (a) Unless the will expressly provides otherwise, if after executing a will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes all of the following:

(1) Any disposition or appointment of property made by the will to the former spouse.

(2) Any provision of the will conferring a general or special power of appointment on the former spouse.

(3) Any provision of the will nominating the former spouse as executor, trustee, conservator, or guardian.

(b) If any disposition or other provision of a will is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(c) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator and Section 204.050 does not apply.

(2) Other provisions of the will conferring some power or office on the former spouse shall be interpreted as if the former spouse failed to survive the testator.

(d) For purposes of this section, dissolution or annulment means any dissolution or annulment which would exclude the spouse as a surviving spouse within the meaning of Section 100.470. A decree of legal separation which does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(e) No change of circumstances other than as described in this section revokes a will.

202.040. (a) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by acts under Section 202.010 or 202.020, the first will is revoked in whole or in part unless it is evident from the circumstances of the revocation of the second will or from testator's contemporary or subsequent declarations that the testator intended the first will to take effect as executed.

(b) If a second will which, had it remained effective at death, would have revoked the first will in whole or in part, is thereafter revoked by a third will, the first will is revoked in whole or in part, except to the extent it appears from the terms of the third will that the testator intended the first will to take effect.

4782

#### CHAPTER 4. REFERENCE TO MATTERS OUTSIDE THE WILL

203.010. A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

203.020. A will may dispose of property by reference to acts and events that have significance apart from their effect upon the dispositions made by the will, whether the acts and events occur before or after the testator's death. The execution or revocation of a will of another person is such an event.

#### CHAPTER 5. RULES OF CONSTRUCTION OF WILLS

##### Article 1. General Provisions

204.010. The intention of a testator as expressed in his or her will controls the legal effect of the dispositions in the will.

204.015. Except to the extent the rule otherwise provides, the rules of construction in this chapter apply unless a contrary intention is indicated by the will.

204.020. The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in the will unless the application of that law is contrary to the provisions of this code relating to any of the following:

(a) The rights of the surviving spouse in community and quasi-community property.

(b) The provisions of Part 3 (commencing with Section 250.010).

(c) Any other public policy of this state otherwise applicable to the disposition.

4783

204.030. (a) A devisee who does not survive the testator by 120 hours is treated as if the devisee predeceased the testator. If the time of death of the testator or of the devisee, or the time of death of both, cannot be determined, and it cannot be established that the devisee has survived the testator by 120 hours, it is deemed that the devisee did not survive for the required period.

(b) Subdivision (a) does not apply if the testator's will contains language (1) dealing explicitly with simultaneous deaths or deaths in a common disaster or (2) requiring that the devisee survive the testator for a stated period in order to take under the will.

204.040. Except as provided by Sections 1386.1 and 1386.2 of the Civil Code relating to powers of appointment, a will passes all property the testator owns at death including property acquired after execution of the will.

204.050. If a devisee is dead at the time of execution of the will, fails to survive the testator, or is treated as if he or she predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee they take equally, but if of unequal degree then those of more remote degree take by representation. One who would have been a devisee under a class gift if he or she had survived the testator is treated as a devisee for the

purposes of this section whether his or her death occurred before or after the execution of the will.

204.060. Except as provided in Section 204.050:

(a) If a devise other than a residuary devise fails for any reason, the property devised becomes a part of the residue.

(b) If the residue is devised to two or more persons and the share of one of the residuary devisees fails for any reason, the share passes to the other residuary devisee or to the other residuary devisees in proportion to their interests in the residue.

4784

204.080. Halfbloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession.

204.090. (a) A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

(b) A person conceived before but born after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes if answering to the description of the class.

204.100. (a) Testamentary dispositions, including devises to a person on attaining majority, are presumed to vest at the testator's death.

(b) A devise of property to more than one person vests the property in them as owners in common.

204.110. The law of this state does not include (1) the common law rule of worthier title that a testator cannot devise an interest to his or her own heirs or (2) a presumption or rule of interpretation that a testator does not intend, by a devise to his or her own heirs or next of kin, to transfer an interest to them. The meaning of a devise of a legal or equitable interest to a testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of wills. This section applies to all cases in which a final judgment had not been entered as of September 18, 1959.

204.120. If a will directs the conversion of real property into money, the property and its proceeds are deemed personal property from the time of the testator's death.

204.130. The death of a devisee of a limited interest before the testator's death does not defeat the interest of persons in remainder who survive the testator.

4785

Article 2. Conditional Dispositions in Wills

204.210. A conditional disposition in a will is a disposition that is to take effect or be defeated upon the occurrence of some uncertain event.

204.220. A condition precedent in a will is a condition that is required to be fulfilled before a particular disposition takes effect. The condition precedent is deemed fulfilled when the testator's intention has been substantially, though not literally, complied with. A disposition subject to a condition precedent does not vest until the condition precedent is fulfilled; but, if fulfillment is impossible, the disposition vests unless the condition precedent was the sole motive of the disposition and the impossibility was unknown to the testator or arose from an unavoidable event after the execution of the will.

204.230. A disposition in a will is subject to a condition subsequent if the disposition is so given as to vest immediately subject only to being divested by some subsequent act or event. A testamentary disposition, when vested, cannot be divested except upon the occurrence of the precise contingency prescribed in the will for that purpose.

4786

Article 3. Ascertaining Meaning of Language  
Used in the Will

204.310. The words of a will are to receive an interpretation that will give every expression some effect, rather than one that will render any of the expressions inoperative; and preference is to be given to an interpretation of a will that will prevent a total intestacy, rather than one that will result in a total intestacy.

204.320. All the parts of a will are to be construed in relation to each other and so as, if possible, to form a consistent whole. If the meaning of any part of a will is ambiguous or doubtful, it may be explained by any reference to or recital of that part in another part of the will.

204.330. A clear and distinct devise is not affected by any of the following:

- (a) Any reasons given for the devise.
- (b) Any other words not equally clear and distinct.
- (c) Inference or argument from other parts of the will.
- (d) An inaccurate reference to or recital of its contents in another part of the will.

204.340. The words of a will are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. Technical words are not necessary to give effect to a disposition in a will. Technical words in a will are to be considered as having been used in their techni-

cal sense unless (1) the context clearly indicates a contrary intention or (2) it satisfactorily appears that the will was drawn solely by the testator and that the testator was unacquainted with the technical sense.

204.350. Words in a will referring simply to death or survivorship relate to the time of the testator's death unless possession of devised property is postponed, in which case the words relate to the time of possession.

4788

Article 4. Exoneration; Ademption

204.400. A specific devise passes the property devised subject to any mortgage, deed of trust, or other lien existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts.

204.410. (a) If the testator intended a specific devise of certain securities rather than the equivalent value thereof, the specific devisee is entitled only to:

(1) As much of the devised securities as is a part of the estate at the time of the testator's death.

(2) Any additional or other securities of the same entity owned by the testator by reason of action initiated by the entity excluding any acquired by exercise of purchase options.

(3) Securities of another entity owned by the testator as a result of a merger, consolidation, reorganization or other similar action initiated by the entity.

(4) Any additional securities of the entity owned by the testator as a result of a plan of reinvestment if it is a regulated investment company.

(b) Distributions prior to death with respect to a specifically devised security not provided for in subdivision (a) are not part of the specific devise.

204.420. A specific devisee has the right to the remaining specifically devised property and all the following:

(a) Any balance of the purchase price (together with any security interest) owing from a purchaser to the testator at death by reason of sale of the property.

(b) Any amount of an eminent domain award for the taking of the property unpaid at death.

(c) Any proceeds unpaid at death on fire or casualty insurance on the property.

(d) Property owned by the testator at death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically devised obligation.

4789

204.430. (a) Except as otherwise provided in this section, if specifically devised property is sold by a conservator, the specific devisee has the right to a general pecuniary devise equal to the net sale price of the property.

(b) Except as otherwise provided in this section, if an eminent domain award for the taking of specifically devised property is paid to a conservator, or if the proceeds on fire or casualty insurance on specifically devised property are paid to a conservator, the specific devisee has the right to a general pecuniary devise equal to the eminent domain award or the insurance proceeds.

(c) This section does not apply if, after the sale, condemnation, fire, or casualty, the conservatorship is terminated and the testator survives the termination by one year.

(d) The right of the specific devisee under this section is reduced by any right the specific devisee has under Section 204.420.

204.440. (a) Property a testator gave during lifetime to a person is treated as a satisfaction of a devise to that person in whole or in part only if one of the following conditions is satisfied:

(1) The will provides for deduction of the lifetime gift.

(2) The testator declares in a contemporaneous writing that the gift is to be deducted from the devise or is in satisfaction of the devise.

(3) The devisee acknowledges in writing that the gift is in satisfaction.

(b) Subject to subdivision (c), for the purpose of partial satisfaction, property given during lifetime is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first.

(c) If the value of the gift is expressed in the contemporaneous writing of the testator, or in an acknowledgment of the devisee made contemporaneously with the gift, that value is conclusive in the division and distribution of the estate.

4790

204.450. If the testator after execution of the will enters into an agreement for the sale or transfer of specifically devised property, the specific devisee has the right to the property subject to the remedies of the purchaser or transferee.

204.460. If the testator after execution of the will places a charge or encumbrance on specifically devised property for the purpose of securing the payment of money or the performance of any covenant or agreement, the specific devisee has the right to the property subject to the charge or encumbrance.

204.470. If the testator after execution of the will alters, but does not wholly divest, the testator's interest in specifically devised property by a conveyance, settlement, or other act, the specific devisee has the right to the remaining interest of the testator in the property.

## CHAPTER 6. CALIFORNIA STATUTORY WILL

## Article 1. Definitions and Rules of Construction

205.010. Unless the provision or context clearly requires otherwise, these definitions and rules of construction govern the construction of this chapter.

205.020. "Testator" means a person choosing to adopt a California statutory will.

205.030. "Spouse" means the testator's husband or wife at the time the testator signs a California statutory will.

205.040. "Executor" means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will.

205.045. "Trustee" means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will.

205.050. "Descendants" means children, grandchildren, and their lineal descendants of all degrees.

205.060. (a) A class designation of "descendants" or "children" includes (1) persons legally adopted into the class during minority and (2) persons naturally born into the class (in or out of wedlock).

(b) A reference to "descendants" in the plural includes a single descendant where the context so requires.

205.070. Masculine pronouns include the feminine, and plural and singular words include each other, where appropriate.

205.080. (a) If a California statutory will states that a person shall perform an act, the person is required to perform that act.

(b) If a California statutory will states that a person may do an act, the person's decision to do or not to do the act shall be made in the exercise of the person's fiduciary powers.

205.090. Whenever a distribution under a California statutory will is to be made to a person's descendants, the property shall be divided into as many equal shares as there are then living descendants of the nearest degree of living descendants and deceased descendants of that same degree who leave descendants then living; and each living descendant of the nearest degree shall receive one share and the share of each deceased descendant of that same degree shall be divided among his or her descendants in the same manner.

205.100. "Person" includes individuals and institutions.

## Article 2. General Provisions

205.200. Any individual of sound mind and over the age of 18 may execute a California statutory will under the provisions of this chapter.

205.210. (a) The only method of executing a California statutory will is for all of the following to occur:

(1) The testator shall complete the appropriate blanks and shall sign the will.

(2) Each witness shall sign his or her name as a witness either (A) to the testator's signing of the will or (B) to the testator's

acknowledgment that the testator signed the will or (C) to the testator's acknowledgment that the will is the testator's will.

(b) The execution of the attestation clause provided in the California statutory will by two or more witnesses satisfies Section 329.

205.220. (a) There are two California statutory wills:

- (1) A California statutory will.
- (2) A California statutory will with trust.

(b) Each California statutory will includes all of the following:

(1) The contents of the appropriate California Statutory Will Form, including the notice set out in Section 205.510 or 205.515.

(2) By reference, the full texts of each of the following:

(A) The definitions and rules of construction set forth in Article 1 (commencing with Section 205.010).

(B) The clause set forth in Section 205.520.

(c) The property disposition clause adopted by the testator.

(d) The mandatory clauses set forth in Sections 205.540 and, if applicable, 205.545.

205.230. If more than one property disposition clause appearing in paragraph 2.3 of a California Statutory Will Form is selected, or if none is selected, the property of a testator who signs a California statutory will shall be distributed to the testator's heirs as if the testator did not make a will.

205.240. Only the texts of the property disposition clauses and the mandatory clauses shall be considered in determining their meaning. Their titles shall be disregarded.

28725

205.250. (a) A California statutory will may be revoked and may be amended by codicil in the same manner as other wills.

(b) Any additions to or deletions from the California statutory will on the face of the California Statutory Will Form, other than in

accordance with the instructions, are ineffective and shall be disregarded.

205.260. (a) If after executing a California statutory will the testator's marriage is dissolved or annulled, the dissolution or annulment revokes any disposition of property made by the will to the former spouse and any nomination of the former spouse as executor, trustee, or guardian made by the will. If any disposition or nomination is revoked solely by this section, it is revived by the testator's remarriage to the former spouse.

(b) In case of revocation by dissolution or annulment:

(1) Property prevented from passing to a former spouse because of the revocation passes as if the former spouse failed to survive the testator and Section 204.050 does not apply.

(2) Provisions nominating the former spouse as executor, trustee, or guardian shall be interpreted as if the former spouse failed to survive the testator.

(c) For purposes of this section, divorce or annulment means any dissolution or annulment that would exclude the spouse as a surviving spouse within the meaning of Section 100.470. A decree of legal separation which does not terminate the status of husband and wife is not a divorce or dissolution for purposes of this section.

(d) This section applies to any California statutory will, without regard to the time when the will was executed, if the testator dies after December 31, 1984.

28726

### Article 3. Form and Full Text of Clauses

205.510. The following is the California Statutory Will Form:

## CALIFORNIA STATUTORY WILL

### NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

2. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

3. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

4. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR THE DELETED OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

5. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

6. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

7. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

8. YOU SHOULD KEEP THIS WILL IN YOUR SAFE DEPOSIT BOX OR OTHER SAFE PLACE.

9. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

10. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

11. IF YOU HAVE CHILDREN UNDER 21 YEARS OF AGE, YOU MAY WISH TO USE THE CALIFORNIA STATUTORY WILL WITH TRUST OR ANOTHER TYPE OF WILL.

[A printed form for a California statutory will shall set forth the above notice in 10-point bold face type.]

## CALIFORNIA STATUTORY WILL OF

(Insert Your Name)

### Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

### Article 2. Disposition of My Property

**2.1. PERSONAL AND HOUSEHOLD ITEMS.** I give all my furniture, furnishings, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

**2.2. CASH GIFT TO A PERSON OR CHARITY.** I make the following cash gift to the person or charity in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

|   |   |
|---|---|
| <p>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)</p> | <p>AMOUNT OF GIFT<br/>\$ _____</p> <p>AMOUNT WRITTEN OUT:<br/>_____ Dollars</p> |
| <p></p>   | <p>_____<br/>Signature of Testator</p>  |

**2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE").** I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

**PROPERTY DISPOSITION CLAUSES (Select one.)**

**(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.**

**(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.**

**(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL.**

**Article 3. Nominations of Executor and Guardian**

**3.1. EXECUTOR (Name at least one.)**

I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR. \_\_\_\_\_

SECOND EXECUTOR. \_\_\_\_\_

THIRD EXECUTOR. \_\_\_\_\_

**3.2. GUARDIAN** (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.2 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.2 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF THE PERSON. \_\_\_\_\_

FIRST GUARDIAN OF THE PROPERTY. \_\_\_\_\_

SECOND GUARDIAN OF THE PERSON. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PERSON. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

### 3.3. BOND

My signature in this box means that a bond is not required for any individual executor or guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code.

I sign my name to this California Statutory Will  
on \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_\_  
Date City State

\_\_\_\_\_  
Signature of Testator

### STATEMENT OF WITNESSES (You must use two adult witnesses and three would be preferable.)

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will as his or her last will, that to the best of our knowledge the testator is of sound mind and under no duress, fraud, or undue influence, and that each of us signs below as witness either (1) to the testator's signing

of the will or (2) to the testator's acknowledgment that the testator signed the will or (3) to the testator's acknowledgment that this will is the testator's will.

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name  
Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name  
Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name  
Here: \_\_\_\_\_

205.515. The following is the California Statutory Will With Trust Form:

### CALIFORNIA STATUTORY WILL WITH TRUST

#### NOTICE TO THE PERSON WHO SIGNS THIS WILL:

1. THIS FORM CONTAINS A TRUST FOR YOUR DESCENDANTS. IF YOU DO NOT WANT TO CREATE A TRUST, DO NOT USE THIS FORM.

2. IT MAY BE IN YOUR BEST INTEREST TO CONSULT WITH A CALIFORNIA LAWYER BECAUSE THIS STATUTORY WILL HAS SERIOUS LEGAL EFFECTS ON YOUR FAMILY AND PROPERTY.

3. THIS WILL DOES NOT DISPOSE OF PROPERTY WHICH PASSES ON YOUR DEATH TO ANY PERSON BY OPERATION OF LAW OR BY ANY CONTRACT. FOR EXAMPLE, THE WILL DOES NOT DISPOSE OF JOINT TENANCY ASSETS OR YOUR SPOUSE'S SHARE OF COMMUNITY PROPERTY, AND IT WILL NOT NORMALLY APPLY TO PROCEEDS OF LIFE INSURANCE ON YOUR LIFE OR YOUR RETIREMENT PLAN BENEFITS.

4. THIS WILL IS NOT DESIGNED TO REDUCE DEATH TAXES OR ANY OTHER TAXES. YOU SHOULD DISCUSS THE TAX RESULTS OF YOUR DECISIONS WITH A COMPETENT TAX ADVISOR.

5. YOU CANNOT CHANGE, DELETE, OR ADD WORDS TO THE FACE OF THIS CALIFORNIA STATUTORY WILL. IF YOU DO, THE CHANGE OR THE DELETED OR ADDED WORDS WILL BE DISREGARDED AND THIS WILL MAY BE GIVEN EFFECT AS IF THE CHANGE, DELETION, OR ADDITION HAD NOT BEEN MADE. YOU MAY REVOKE THIS STATUTORY WILL. YOU MAY REVOKE THIS CALIFORNIA STATUTORY WILL AND YOU MAY AMEND IT BY CODICIL.

6. IF THERE IS ANYTHING IN THIS WILL THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

7. THE FULL TEXT OF THIS CALIFORNIA STATUTORY WILL, THE DEFINITIONS AND RULES OF CONSTRUCTION, THE PROPERTY DISPOSITION CLAUSES, AND THE MANDATORY CLAUSES FOLLOW THE END OF THIS WILL AND ARE CONTAINED IN THE PROBATE CODE OF CALIFORNIA.

8. THE WITNESSES TO THIS WILL SHOULD NOT BE PEOPLE WHO MAY RECEIVE PROPERTY UNDER THIS WILL. YOU SHOULD CAREFULLY READ AND FOLLOW THE WITNESSING PROCEDURE DESCRIBED AT THE END OF THIS WILL.

9. YOU SHOULD KEEP THIS WILL IN YOUR SAFE DEPOSIT BOX OR OTHER SAFE PLACE.

10. THIS WILL TREATS MOST ADOPTED CHILDREN AS IF THEY ARE NATURAL CHILDREN.

11. IF YOU MARRY OR DIVORCE AFTER YOU SIGN THIS WILL, YOU SHOULD MAKE AND SIGN A NEW WILL.

[A printed form for a California Statutory Will With Trust shall set forth the above notice in 10-point bold face type.]

**CALIFORNIA STATUTORY WILL  
WITH TRUST OF**

---

(Insert Your Name)

**Article 1. Declaration**

**This is my will and I revoke any prior wills and codicils.**

**Article 2. Disposition of My Property**

**2.1. PERSONAL AND HOUSEHOLD ITEMS.** I give all my furniture, furnishings, household items, personal automobiles, and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

**2.2. CASH GIFT TO A PERSON OR CHARITY.** I make the following cash gift to the person or charity and in the amount stated in words and figures in the box which I have completed and signed. If I fail to sign in the box, no gift is made. If the person mentioned does not survive me, or the charity designated does not accept the gift, then no gift is made. No death tax shall be paid from this gift.

|   |   |
|---|---|
| <p align="center"><b>FULL NAME OF PERSON OR CHARITY TO RECEIVE CASH GIFT (Name only one. Please print.)</b></p> | <p align="center"><b>AMOUNT OF GIFT</b><br/>\$ _____</p> <p align="center"><b>AMOUNT WRITTEN OUT:</b><br/>_____ Dollars</p> |
|   | <p align="center">_____<br/><b>Signature of Testator</b></p>  |

**2.3. ALL OTHER ASSETS (MY "RESIDUARY ESTATE").** I adopt only one Property Disposition Clause in this paragraph 2.3 by writing my signature in the box next to the title of the Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or if I fail to sign in any box, the property will be distributed as if I did not make a will.

**PROPERTY DISPOSITION CLAUSES (Select one.)**

**(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION**

OF MY CHILDREN  
AND THE DE-  
SCENDANTS OF  
ANY DECEASED  
CHILD UNTIL I  
HAVE NO LIVING  
CHILD UNDER 21  
YEARS OF AGE. \_\_\_\_\_

(b) TO MY CHILDREN  
AND THE DE-  
SCENDANTS OF  
ANY DECEASED  
CHILD IN ONE  
TRUST TO PRO-  
VIDE FOR THEIR  
SUPPORT AND ED-  
UCATION UNTIL I  
HAVE NO LIVING  
CHILD UNDER 21  
YEARS OF AGE. I  
LEAVE NOTHING  
TO MY SPOUSE, IF  
LIVING. \_\_\_\_\_

**Article 3. Nominations of Executor, Trustee, and  
Guardian**

**3.1. EXECUTOR (Name at least one.)**

I nominate the person or institution named in the first  
box of this paragraph 3.1 to serve as executor of this will.  
If that person or institution does not serve, then I  
nominate the others to serve in the order I list them  
in the other boxes.

FIRST EXECUTOR. \_\_\_\_\_

SECOND EXECUTOR. \_\_\_\_\_

THIRD EXECUTOR. \_\_\_\_\_

**3.2. TRUSTEE (Name at least one.)**

Because it is possible that after I die my property may be put into a trust, I nominate the person or institution named in the first box of this paragraph 3.2 to serve as trustee of that trust. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST TRUSTEE. \_\_\_\_\_

SECOND TRUSTEE. \_\_\_\_\_

THIRD TRUSTEE. \_\_\_\_\_

**3.3. GUARDIAN (If you have a child under 18 years of age, you should name at least one guardian of the child's person and at least one guardian of the child's property. The guardian of the child's person and the guardian of the child's property may, but need not, be the same. An individual can serve as guardian of either the person or the property, or as guardian of both. An institution can serve only as guardian of the property.)**

If a guardian is needed for any child of mine, then I nominate the individual named in the first box of this paragraph 3.3 to serve as guardian of the person of that child, and I nominate the individual or institution named in the second box of this paragraph 3.3 to serve as guardian of the property of that child. If that person or institution does not serve, then I nominate the others to serve in the order I list them in the other boxes.

FIRST GUARDIAN OF  
THE PERSON. \_\_\_\_\_

FIRST GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PERSON. \_\_\_\_\_

SECOND GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PERSON. \_\_\_\_\_

THIRD GUARDIAN OF  
THE PROPERTY. \_\_\_\_\_

**3.4. BOND**

My signature in this box means that a bond is not required for any individual (a) executor, (b) trustee, or (c) guardian named in this will. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code.

I sign my name to this California Statutory Will  
With Trust on \_\_\_\_\_ at \_\_\_\_\_  
Date City State

\_\_\_\_\_  
Signature of Testator

**STATEMENT OF WITNESSES (You must use two  
adult witnesses, and three witnesses would be  
preferable.)**

Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will with trust as his or her last will, that to the best of our knowledge the testator is of sound mind and under no duress, fraud, or undue influence, and that each of us signs below as witness either (1) to the testator's signing of the will or (2) to the testator's acknowledgment that the testator signed the will or (3) to the testator's acknowledgment that this will is the testator's last will.

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Here: \_\_\_\_\_

Signature \_\_\_\_\_ Residence Address: \_\_\_\_\_  
Print Name \_\_\_\_\_  
Here: \_\_\_\_\_

205.520. The following is the full text of paragraph 2.1 of both California Statutory Will Forms appearing in this chapter:

If my spouse survives me, I give my spouse all my books, jewelry, clothing, personal automobiles, household furnishings and effects, and other tangible articles of a

household or personal use. If my spouse does not survive me, the executor shall distribute those items among my children who survive me, and shall distribute those items in as nearly equal shares as feasible in the executor's discretion. If none of my children survive me, the items described in this paragraph shall become part of the residuary estate.

205.530. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California Statutory Will Form set forth in Section 205.510:

**(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD.**

If my spouse survives me, then I give all my residuary estate to my spouse. If my spouse does not survive me, then I give all my residuary estate to my descendants who survive me.

**(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.**

I give all my residuary estate to my descendants who survive me. I leave nothing to my spouse, even if my spouse survives me.

**(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL:**

The executor shall distribute my residuary estate to my heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of my death and relating to the succession of separate property.

205.535. The following are the full texts of the property disposition clauses referred to in paragraph 2.3 of the California Statutory Will With Trust Form set forth in Section 205.515:

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN IN ONE TRUST TO PROVIDE FOR THE SUPPORT AND EDUCATION OF MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE.

(1) If my spouse survives me, then I give all my residuary estate to my spouse.

(2) If my spouse does not survive me and if any child of mine under 21 years of age survives me, then I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much, or all, of the (i) principal or (ii) net income of the trust, or (iii) both, as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(3) If my spouse does not survive me and if no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(b) TO MY CHILDREN AND THE DESCENDANTS OF ANY DECEASED CHILD IN ONE TRUST TO PROVIDE FOR THEIR SUPPORT AND EDUCATION UNTIL I HAVE NO LIVING CHILD UNDER 21 YEARS OF AGE. I LEAVE NOTHING TO MY SPOUSE, IF LIVING.

(1) I give all my residuary estate to the trustee, in trust, on the following terms:

(A) As long as any child of mine under 21 years of age is living, the trustee shall distribute from time to time to or for the benefit of any one or more of my children and the descendants of any deceased child (the beneficiaries) of any age as much or all, of the (i) principal, or (ii) net income of the trust, or (iii) both as the trustee deems necessary for their health, support, maintenance, and education. Any undistributed income shall be accumulated and added to the principal. "Education" includes, but is not limited to, college, graduate, postgraduate, and vocational studies, and reasonably related living expenses. Consistent with the trustee's fiduciary duties, the trustee may distribute trust income or principal in equal or unequal shares and to any one or more of the beneficiaries to the exclusion of other beneficiaries. In deciding on distributions, the trustee may take into account, so far as known to the trustee, the beneficiaries' other income, outside resources, or sources of support, including the capacity for gainful employment of a beneficiary who has completed his or her education.

(B) The trust shall terminate when there is no living child of mine under 21 years of age. The trustee shall distribute any remaining principal and accumulated net income of the trust to my descendants who are then living.

(2) If no child of mine under 21 years of age survives me, then I give all my residuary estate to my descendants who survive me.

(3) I leave nothing to my spouse, even if my spouse survives me.

\*205.540. The mandatory clauses of all California statutory wills are as follows:

(a) **INTESTATE DISPOSITION.** If the testator has not made an effective disposition of the residuary estate, the executor shall distribute it to the testator's heirs at law, their identities and respective shares to be determined according to the laws of the State of California in effect on the date of the testator's death and relating to the succession of separate property.

(b) **POWERS OF EXECUTOR.**

(1) In addition to any powers now or hereafter conferred upon executors by law, including all powers granted under the Independent Administration of Estates Act, the executor shall have the power to: (A) sell estate assets at public or private sale, for cash or on credit terms, (B) lease estate assets without restriction as to duration, and (C) invest any surplus moneys of the estate in real or personal property, as the executor deems advisable.

(2) The executor may distribute estate assets otherwise distributable to a minor beneficiary to (A) the guardian of the minor's person or estate, (B) any adult person with whom the minor resides and who has the care, custody, or control of the minor; or (C) a custodian, serving on behalf of the minor under the Uniform Gifts to Minors Act of any state.

The executor is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(3) On any distribution of assets from the estate, the executor shall have the discretion to partition, allot, and distribute the assets (A) in kind, including undivided interests in an asset or in any part of it, or (B) partly in cash and partly in kind, or (C) entirely in cash. If a distribution is being made to more than one beneficiary, the executor shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(c) **POWERS OF GUARDIAN.** A guardian of the person nominated in the California statutory will shall have the same authority with respect to the person of the ward as a parent having legal custody of a child would have. A guardian of the estate nominated in a California statutory will shall have all of the powers conferred by law. All powers granted to guardians in this paragraph may be exercised without court authorization.

205.545. In addition to the mandatory clauses contained in Section 205.540, the California Statutory Will With Trust Form shall incorporate the following mandatory clauses:

(a) **INEFFECTIVE DISPOSITION.** If, at the termination of any trust created in the California statutory will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect and relating to the succession of separate property.

(b) **POWERS OF TRUSTEE.** (1) In addition to any powers now or hereafter conferred upon trustees by law, the trustee shall have all the powers listed in Section 1120.2. The trustee may exercise those powers without court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

(B) On any distribution of assets from the trust, the trustee shall have the discretion to partition, allot, and distribute the assets (i) in kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a pro rata or nonpro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Gifts to Minors Act of any state.

The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(c) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a California Statutory Will With Trust:

(1) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(2) The trustee is entitled to reasonable compensation for ordinary and extraordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(3) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the California statutory will with trust.

205.550. Except as specifically provided in this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

205.560. Except as specifically provided in this chapter, nothing in this chapter changes the substantive law of California.

## CHAPTER 7. UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT

206.010. A devise, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the corpus of the trust). The devise is not invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before the death of the testator (regardless of whether made before or after the execution of the testator's will) and, if the testator's will so provides, including any amendments to the trust made after the death of the testator. A revocation or termination of the trust before the death of the testator causes the devise to lapse.

206.020. This chapter does not invalidate any devise made by a will executed prior to September 17, 1965.

206.030. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

206.040. This chapter may be cited as the Uniform Testamentary Additions to Trust Act.

CHAPTER 8. TRUST FOR INSURANCE  
OR EMPLOYEE BENEFITS

206.500. As used in this chapter, unless the context otherwise requires:

(a) "Contract or plan" means any of the following:

(1) An insurance, annuity, or endowment contract (including any agreement issued or entered into by the insurer in connection therewith, supplemental thereto, or in settlement thereof).

(2) A pension, retirement benefit, death benefit, stock bonus, profit-sharing or employees' saving plan, or contract created or entered into by an employer for the benefit of some or all of his or her employees.

(3) Self-employed retirement plans, and individual annuities or accounts, provided for in the Internal Revenue Code as now or hereafter amended.

(b) "Designation" means a designation made pursuant to Section 206.510.

206.510. A contract or plan may designate as a primary or contingent beneficiary, payee, or owner a trustee named or to be named in the will of the person entitled to designate the beneficiary, payee, or owner. The designation shall be made in accordance with the provisions of the contract or plan or, in the absence of such provisions, in a manner approved by the insurer if an insurance, annuity, or endowment contract is involved, and by the trustee, custodian, or person or entity administering the contract or plan, if any. The designation may be made before or after the execution of the designator's will and is not required to comply with the formalities for execution of a will.

206.520. The designation is ineffective unless the designator's will contains provisions creating the trust or makes a disposition valid under Section 206.010.

206.530. Subject to the provisions of Section 206.550, the benefits or rights resulting from the designation are payable or transferable directly to the trustee, without becoming subject to administration, upon or at any time after admission of the designator's will to probate. A designation pursuant to this chapter shall not be deemed to have the effect of naming a trustee of a separate inter vivos trust but the rights and benefits or the proceeds thereof when paid to such trustee shall be, or become a part of, the testamentary trust or trusts established pursuant to the designator's will or shall be added to an inter vivos trust or trusts if the disposition is governed by Section 206.010.

206.540. Except as otherwise provided in the designator's will, the rights and benefits and their proceeds paid or transferred to the trustee are not subject to the debts of the designator to any greater extent than if they were paid or transferred to a named beneficiary, payee, or owner other than the estate of the designator.

206.550. (a) The court in which the proceedings are pending for administration of the estate of the decedent has jurisdiction, before or after payment or transfer of benefits and rights or their proceeds to the trustee, to:

- (1) Determine the validity of the trust.
- (2) Determine the terms of the trust.
- (3) Fill vacancies in the office of trustee.
- (4) Require an undertaking of a trustee or successor trustee in its discretion and in such amount as the court may determine for the faithful performance of duties as trustee, subject to the provisions of Article 3 (commencing with Section 1540) of Chapter 12 of Division 1 of the Financial Code and Section 1127.5 of this code.
- (5) Grant additional powers to the trustee, as provided in Section 1120.2.
- (6) Instruct the trustee.
- (7) Determine, fix, or allow payment of compensation of a trustee as provided in Section 1122.

(8) Hear and determine adverse claims to the subject of the trust by the personal representative, surviving spouse, or other third person.

(9) Determine the identity of the trustee and the trustee's acceptance or rejection of the office and, upon request, furnish evidence of trusteeship to a trustee.

(10) Order postponement of the payment or transfer of the benefits and rights or their proceeds.

(11) Authorize or direct removal of the trust or assets of the trust to another jurisdiction pursuant to the procedure provided in Article 3 (commencing with Section 1139) of Chapter 19 of Division 3.

(12) Make any order incident to the foregoing or to the accomplishment of the purposes of this chapter.

(b) The personal representative of the designator's estate, any trustee named in the will or designation or successor to such trustee, or any person interested in the estate or trust may petition the court for an order under this section. Notice of hearing of the petition shall be given in the manner provided in Section 1120, except as the court may otherwise order.

206.560. As to matters not specifically provided in Section 206.550, the provisions of Chapter 19 (commencing with Section 1120) of Division 3 apply to the trust.

206.570. An appeal may be taken from any of the following:

(a) Any order described in Section 1240 made pursuant to this chapter.

(b) An order making or refusing to make a determination specified in paragraph (1), (2), or (8) of subdivision (a) of Section 206.550.

4995

206.580. If no qualified trustee makes claim to the benefits or rights or proceeds within one year after the death of the designator, or if satisfactory evidence is furnished within such one-year period showing that no trustee can qualify to receive them, payment or transfer

may be made, unless the designator has otherwise provided, by the obligor to the personal representative of the designator or to those thereafter entitled, and the obligor is discharged from liability.

206.590. Enactment of this chapter does not invalidate trusts, otherwise valid, not made pursuant to the provisions of this chapter.

4998

CHAPTER 9. DEVISE SUBJECT TO UNIFORM GIFTS  
TO MINORS ACT

207.010. A testator may devise securities, money, life or endowment policies, annuity contracts, real estate, tangible personal property, or any other type of property, as these terms are defined or used in the California Uniform Gifts to Minors Act, Article 4 (commencing with Section 1154) of Chapter 3 of Title 4 of Part 4 of Division 2 of the Civil Code, to a person who is a minor as provided in this chapter.

207.020. If a testator's will provides that devised property shall be paid or delivered to a custodian subject to the California Uniform Gifts to Minors Act, all of the provisions of that act, including, but not limited to, the definitions and the provisions concerning powers, rights, and immunities contained in that act, are applicable to the devise during the period prior to distribution of the property.

207.030. The devise under this chapter shall be made to a designated adult person or a trust company qualified to do business in this state with the words, in substance, "as custodian for (name of minor) under the California Uniform Gifts to Minors Act." Failure to name a qualified custodian does not invalidate the devise as a devise permitted by this chapter. A variation in the wording of the devise from the wording set forth in this section shall be disregarded if the testator's intent to make a devise pursuant to this chapter appears from the will as a whole or from the wording of the devise.

207.040. Unless the will clearly requires otherwise, a devise which does not comply with the provisions of Sections 207.010, 207.020, and 207.030, or a devise to a person who becomes an adult prior to the order for distribution, shall be deemed to be a direct devise to the person named as the minor for whom the property was to be held.

207.050. If a testator provides for a devise to be paid or delivered as provided in this chapter, the executor or administrator of the testator's estate, upon entry of an order for distribution, shall make distribution pursuant to the order for distribution by transferring the devised property in the form and manner provided by the California Uniform Gifts to Minors Act.

4999

207.060. The testator in his or her will may provide for successor or alternate custodians and may specify the standard of compensation of the custodian.

207.070. If a vacancy in the custodianship exists prior to full distribution of the devised property by the executor or administrator, a successor custodian shall be appointed for any undistributed property in the manner provided by the California Uniform Gifts to Minors Act.

207.080. (a) Except as otherwise provided in the will or ordered by a court, each custodian designated in the will and the person for whom the property is to be held shall be deemed a devisee for the purpose of receiving notices which may be required or permitted to be sent to a devisee in the estate of the testator.

(b) Unless required by the will or ordered by the court, a custodian does not have a duty to participate in the proceedings in the estate on behalf of the minor, and in no event does the custodian have a duty to so participate until the custodian has filed a written notice of acceptance of the office of custodian with the clerk of the court in which administration of the estate of the testator is pending.

207.090. Until distribution of the property pursuant to an order for distribution is completed, the court in which administration of the estate of the testator is pending has exclusive jurisdiction over all proceedings and matters concerning undistributed property, including, but not limited to, the appointment, declination, resignation, removal, bonding, and compensation of, and the delivery or transfer of the undistributed property to, a custodian. After distribution of any property is completed, the court has no further jurisdiction over the distributed property and the property shall be held subject to the California Uniform Gifts to Minors Act in the same manner as if it had been a lifetime gift.

207.100. This chapter shall not be construed as providing an exclusive method for making devises to or for the benefit of minors.

5000

#### CHAPTER 10. FILING NOTICE OF WILL

208.010. (a) A person who has made a will may file a notice of will in the office of the Secretary of State.

(b) The notice of will shall contain the following information:

(1) The name of the testator.

(2) The testator's address.

(3) The testator's social security or other individual-identifying number established by law, if any.

(4) The testator's date and place of birth.

(5) A statement that the testator has made a will and the date of the will.

(6) The place where the will is kept.

(c) The notice may include any of the following:

(1) The name and address of the testator's attorney.

(2) The name and address of a person who has custody of the will or custody of a copy of the will.

(d) If the testator's name is changed or if the place where the will is kept is changed, the testator may file a new notice of will containing the correct information. The new notice of will may also refer to the earlier notice of will.

(e) The filing of a notice of will, or the failure to file a notice of will, under this section does not affect the validity of the will.

208.020. (a) A person who has filed a notice of will pursuant to Section 208.010 and who has revoked the will referred to in the notice may file in the office of the Secretary of State a notice of revocation of will.

(b) The notice of revocation of will shall contain the following information:

(1) The name of the person who is revoking the will.

(2) The person's address.

(3) The person's social security or other individual-identifying number established by law, if any.

(4) The person's date and place of birth.

(5) A statement that the will referred to in a notice of will filed by the person pursuant to Section 208.010 has been revoked.

(c) The filing of a notice of revocation under this section does not itself revoke the will. The failure to file a notice of revocation under this section does not affect the validity of a revocation of a will.

208.030. Upon presentation of a notice of will or notice of revocation of will for filing and tender of the filing fee to the office of the Secretary of State, the notice shall be filed and indexed. The fee for filing and indexing a notice of will or notice of revocation of will is five dollars (\$5).

5001

208.040. (a) Information filed pursuant to this chapter shall be kept in strictest confidence until the death of the testator.

(b) After the death of the testator, upon the request of a person who presents a death certificate or other satisfactory evidence of the testator's death, the Secretary of State shall issue a certificate reporting the information on file about the testator's will. If no information on the testator's will is on file, the Secretary of State's

certificate shall state that fact. The fee for a certificate under this section is five dollars (\$5).

208.050. (a) A certificate of the Secretary of State issued pursuant to Section 208.040 shall be filed with the court:

(1) In proceedings for probate of a will or for administration, at a time before any distribution is made or before the time for filing claims expires, whichever is earlier.

(2) In any other proceeding under this code in which the existence of a will is relevant, promptly after the commencement of the proceeding.

(b) This section becomes operative on January 1, 1989.

208.060. The Secretary of State may prescribe the form of the notices and other papers under this chapter.

208.070. Ten years after the Secretary of State has received a request under this chapter for information accompanied by a death certificate or other satisfactory evidence of the testator's death, the Secretary of State may destroy the information filed pursuant to this chapter by the deceased testator and the record of that information.

5002

#### CHAPTER 11. [RESERVED]

#### CHAPTER 12. UNIFORM INTERNATIONAL WILLS ACT

210.010. In this chapter:

(a) "International will" means a will executed in conformity with Sections 210.020 to 210.050, inclusive.

(b) "Authorized person" and "person authorized to act in connection with international wills" means a person who by Section 210.090, or by the laws of the United States including members of the diplomatic and consular service of the United States designated by Foreign Service Regulations, is empowered to supervise the execution of international wills.

210.020. (a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile, or residence of the testator, if it is made in the form of an international will complying with the requirements of this chapter.

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This chapter does not apply to the form of testamentary dispositions made by two or more persons in one instrument.

210.030. (a) The will shall be made in writing. It need not be written by the testator himself or herself. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of two witnesses and of a person authorized to act in connection with international wills that the document is his or her will and that he or she knows the contents thereof. The testator need not inform the witnesses, or the authorized person, of the contents of the will.

(c) In the presence of the witnesses, and of the authorized person, the testator shall sign the will or, if he or she has previously signed it, shall acknowledge his or her signature.

(d) If the testator is unable to sign, the absence of his or her signature does not affect the validity of the international will if the testator indicates the reason for his or her inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or one of the witnesses, at the direction of the testator, to sign the testator's name for him or her if the authorized person makes note of this also on the will, but it is not required that any person sign the testator's name for him or her.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

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210.040. (a) The signatures shall be placed at the end of the will. If the will consists of several sheets, each sheet shall be

signed by the testator or, if he or she is unable to sign, by the person signing on his or her behalf or, if there is no such person, by the authorized person. In addition, each sheet shall be numbered.

(b) The date of the will shall be the date of its signature by the authorized person. That date shall be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether he or she wishes to make a declaration concerning the safekeeping of his or her will. If so and at the express request of the testator, the place where he or she intends to have his or her will kept shall be mentioned in the certificate provided for in Section 210.050.

(d) A will executed in compliance with Section 210.030 is not invalid merely because it does not comply with this section.

210.050. The authorized person shall attach to the will a certificate to be signed by him or her establishing that the requirements of this chapter for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate shall be substantially in the following form:

#### CERTIFICATE

(Convention of October 26, 1973)

1. I, \_\_\_\_\_ (name, address, and capacity), a person authorized to act in connection with international wills,
2. certify that on \_\_\_\_\_ (date) at \_\_\_\_\_ (place)
3. (testator) \_\_\_\_\_  
(name, address, date and place of birth) in my presence and that of the witnesses
4. (a) \_\_\_\_\_ (name, address, date and place of birth)  
(b) \_\_\_\_\_ (name, address, date and place of birth)  
has declared that the attached document is his will and that he knows the contents thereof.
5. I furthermore certify that:
6. (a) in my presence and in that of the witnesses
  - (1) the testator has signed the will or has acknowledged his signature previously affixed.
  - \* (2) following a declaration of the testator stating that he was unable to sign his will for the following reason \_\_\_\_\_, I have mentioned this declaration on the will,  
\* and the signature has been affixed by \_\_\_\_\_  
(name and address)

7. (b) the witnesses and I have signed the will;
8. \*(c) each page of the will has been signed by \_\_\_\_\_  
and numbered;
9. (d) I have satisfied myself as to the identity of the testator  
and of the witnesses as designated above;
10. (e) the witnesses met the conditions requisite to act as such  
according to the law under which I am acting;
11. \*(f) the testator has requested me to include the following  
statement concerning the safekeeping of his will:

- 
12. PLACE OF EXECUTION
  13. DATE
  14. SIGNATURE and, if necessary, SEAL

\* to be completed if appropriate

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210.060. In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this chapter. The absence or irregularity of a certificate does not affect the formal validity of a will under this chapter.

210.070. The international will is subject to the ordinary rules of revocation of wills.

210.080. Sections 210.010 to 210.070, inclusive, derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this chapter, regard shall be had to its international origin and to the need for uniformity in its interpretation.

210.090. Individuals who have been admitted to practice law before the courts of this state and who are in good standing as active law practitioners of this state are authorized persons in relation to international wills.

210.100. The Secretary of State shall establish a registry system by which authorized persons may register in a central information center information regarding the execution of international wills, keeping that information in strictest confidence until the death of the maker and then making it available to any person desiring information about any will who presents a death certificate or other satisfactory evidence of the testator's death to the center. Information that may be received, preserved in confidence until death, and reported as indicated is limited to the name, social security or other individual-identifying number established by law, if any, address, date and place of birth of the testator, and the intended place of deposit or safekeeping of the instrument pending the death of the maker. The Secretary of State, at the request of the authorized person, may cause the information it receives about execution of any international will to be transmitted to the registry system of another jurisdiction as identified by the testator, if that other system adheres to rules protecting the confidentiality of the information similar to those established in this state.

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## PART 2. INTESTATE SUCCESSION

220.010. Any part of the estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in this part.

220.020. (a) As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 110.010.

(b) As to quasi-community property, the intestate share of the surviving spouse is the one-half of the quasi-community property that belongs to the decedent under Section 110.020.

(c) As to separate property, the intestate share of the surviving spouse is as follows:

(1) The entire intestate estate if (A) there is no surviving issue of the decedent or (B) there are surviving issue of the decedent all of whom are issue of the surviving spouse also.

(2) One-half of the intestate estate if there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse.

220.030. The part of the intestate estate not passing to the surviving spouse under Section 220.020, or the entire intestate estate if there is no surviving spouse, passes as follows:

(a) To the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation.

(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 by representation.

(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, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, 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 by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

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220.040. A person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for the purpose of intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive

for the required period. This section does not apply if its application would result in the escheat of property to the state.

220.050. Part 4 (commencing with Section 260.010) (escheat) applies if there is no taker of the intestate estate under the provisions of this part.

220.060. If representation is called for by this code, the estate is divided into as many equal shares as there are surviving heirs in the nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, and the shares shall pass as follows:

(a) Each surviving heir in the nearest degree shall receive one share.

(b) The share of each deceased person in the same degree shall be divided among the deceased person's issue, the issue taking equally if they are all of the same degree of kinship, but if of unequal degree those of more remote degree take by representation in the same manner as provided in this section.

220.070. Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

220.080. Relatives of the decedent conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

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220.090. (a) If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) Except as provided in paragraph (3), the relationship of parent and child exists between a child and its natural parents, regardless of the marital status of the natural parents.

(2) The relationship of parent and child exists between a child and its adoptive parents.

(3) The relationship of parent and child does not exist between an adopted child and its natural parents, except that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent.

(b) For purposes of intestate succession, a parent and child relationship exists where such relationship is (1) presumed and not rebutted pursuant to the Uniform Parentage Act, Part 7 (commencing with Section 7000) of Division 4 of the Civil Code, or (2) established pursuant to the Uniform Parentage Act. Nothing in this subdivision limits the methods by which the relationship of parent and child may be established.

220.100. (a) If a person dies intestate as to all his or her estate, property the decedent gave during lifetime to an heir is treated as an advancement against that heir's share of the estate only if one of the following conditions is satisfied:

(1) The decedent declares in a contemporaneous writing that the gift is to be deducted from the heir's share of the estate or that the gift is an advancement against the heir's share of the estate.

(2) The heir acknowledges in writing that the gift is to be so deducted or is an advancement.

(b) Subject to subdivision (c), the property advanced is to be valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever occurs first.

(c) If the value of the property advanced is expressed in the contemporaneous writing of the decedent, or in an acknowledgment of the heir made contemporaneously with the advancement, that value is conclusive in the division and distribution of the estate.

(d) If the recipient of the property advanced fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

220.110. (a) A debt owed to the decedent is not charged against the intestate share of any person except the debtor.

(b) If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

220.120. No person is disqualified to take as an heir because that person or a person through whom he or she claims is or has been an alien.

220.130. The estates of dower and curtesy are not recognized.

220.140. A person who is related to the decedent 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.

### PART 3. FAMILY PROTECTION

#### CHAPTER 1. TEMPORARY POSSESSION OF FAMILY DWELLING AND EXEMPT PROPERTY

250.010. Until the inventory is filed and for a period of 60 days thereafter, or for such other period as may be ordered by the court for good cause on petition therefor, the decedent's surviving spouse and minor children are entitled to remain in possession of the family dwelling, the wearing apparel of the family, the household furniture, and the other property of the decedent exempt from enforcement of a money judgment.

250.020. A petition for an order under Section 250.010 may be filed by any interested person. The court clerk shall set the petition for hearing by the court, and the petitioner shall give notice of the hearing for the period and in the manner required by Section 1200.5.

CHAPTER 2. SETTING ASIDE EXEMPT PROPERTY  
OTHER THAN FAMILY DWELLING

250.110. Upon the filing of the inventory or at any subsequent time during the administration of the estate, the court in its discretion may on petition therefor set apart all or any part of the property of the decedent exempt from enforcement of a money judgment, other than the family dwelling, to any one or more of the following:

- (a) The surviving spouse.
- (b) The minor children of the decedent.

250.120. A petition for an order under Section 250.110 may be filed by any interested person. The court clerk shall set the petition for hearing by the court, and the petitioner shall give notice of the hearing for the period and in the manner required by Section 1200.5.

CHAPTER 3. SETTING ASIDE PROBATE HOMESTEAD

251.010. Upon the filing of the inventory or at any subsequent time during the administration of the estate, the court in its discretion may on petition therefor select and set apart one probate homestead in the manner provided in this chapter.

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251.020. The probate homestead shall be set apart for the use of one or more of the following persons:

- (a) The surviving spouse.
- (b) The minor children of the decedent.

251.030. (a) The probate homestead shall be selected out of the following property, giving first preference to the community and quasi-community property of, or property owned in common by, the decedent and the person entitled to have the homestead set apart:

(1) If the homestead is set apart for the use of the surviving spouse or for the use of the surviving spouse and minor children, out of community property or quasi-community property.

(2) If the homestead is set apart for the use of the surviving spouse or for the use of the minor children, out of property owned in common by the decedent and the person entitled to have the homestead set apart, or out of the separate property of the decedent or, if the decedent was not married at the time of death, out of property owned by the decedent.

(b) The probate homestead shall not be selected out of property the right to possession of which is vested in a third person unless the third person consents thereto. As used in this subdivision, "third person" means a person whose right to possession of the property (1) existed at the time of the death of the decedent or came into existence upon the death of the decedent and (2) was not created by testate or intestate succession from the decedent.

251.040. (a) In selecting and setting apart the probate homestead, the court shall consider the needs of the surviving spouse and minor children, the liens and encumbrances on the property, the claims of creditors, the needs of the heirs or devisees of the decedent, and the intent of the decedent with respect to the property in the estate and the estate plan of the decedent as expressed in inter vivos and testamentary transfers or by other means.

(b) The court, in light of subdivision (a) and other relevant considerations as determined by the court in its discretion, shall:

(1) Select as a probate homestead the most appropriate property available that is suitable for that use, including in addition to the dwelling itself such adjoining property as appears reasonable.

(2) Set the probate homestead so selected apart for such a term and upon such conditions (including, but not limited to, assignment by the homestead recipient of other property to the heirs or devisees of the property set apart as a homestead) as appear proper.

251.050. The property set apart as a probate homestead shall be set 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. Subject to the probate homestead right, the property of the decedent remains subject to administration including testate and intestate succession. The rights of the parties during the period for which the probate homestead is set apart are governed, to the extent applicable, by the Legal Estates Principal and Income Law, Chapter 2.6 (commencing with Section 731) of Title 2 of Part 1 of Division 2 of the Civil Code.

251.060. A petition to select and set apart a probate homestead may be filed by any interested person. The court clerk shall set the petition for hearing by the court, and the petitioner shall give notice of the hearing for the period and in the manner required by Section 1200.5.

251.070. (a) Property of the decedent set apart as a probate homestead is liable for claims against the estate of the decedent, subject to the probate homestead right. The probate homestead right in property of the decedent is liable for claims that are secured by liens and encumbrances on the property at the time of the decedent's death but is exempt to the extent of the homestead exemption as to any claim that would have been subject to a homestead exemption at the time of the decedent's death under Article 4 (commencing with Section 704.710) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

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

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

251.080. (a) The court may by order modify the term or conditions of the probate homestead right or terminate the probate homestead right at any time prior to entry of a final decree of distribution of the decedent's estate if in the court's discretion to do so appears appropriate under the circumstances of the case.

(b) A petition for an order under this section may be filed by any of the following:

(1) The person for whose use the probate homestead is set apart.

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

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

(c) Notice of the hearing on the petition shall be given to all the persons listed in subdivision (b) (other than the petitioner) for the period and in the manner required by Section 1200.5.

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#### CHAPTER 4. FAMILY ALLOWANCE

252.010. (a) The following are entitled to such reasonable family allowance out of the estate as is necessary for their maintenance according to their circumstances during administration of the estate:

(1) The surviving spouse of the decedent.

(2) Minor children of the decedent.

(3) Adult children of the decedent who are physically or mentally incapacitated from earning a living and were actually dependent in whole or in part upon the decedent for support.

(b) Other adult children of the decedent who were actually dependent in whole or in part upon the decedent for support may be given such reasonable family allowance out of the estate as the court in its discretion determines is necessary for their maintenance according to their circumstances during administration of the estate.

(c) If a person otherwise eligible for family allowance has a reasonable maintenance from other sources and there are one or more other persons entitled to a family allowance, the family allowance shall be granted only to those who do not have a reasonable maintenance from other sources.

252.020. (a) The court may grant or modify a family allowance on petition of any interested person.

(b) With respect to an order for the family allowance provided for in subdivision (a) of Section 252.010:

(1) Before the inventory is filed, the order may be made or modified either (A) ex parte or (B) after notice of the hearing on the petition has been given for the period and in the manner provided in Section 1200.5.

(2) After the inventory is filed, the order may be made or modified only after notice of the hearing on the petition has been given for the period and in the manner provided in Section 1200.5.

(c) An order for the family allowance provided in subdivision (b) of Section 252.010 may be made only after notice of the hearing on the petition has been given for the period and in the manner required by Section 1200.5 to all of the following:

(1) All devisees.

(2) In the case of intestacy, to all known heirs of the decedent.

(3) All persons (or their attorneys, if they have appeared by attorney) who have requested special notice as provided in Section 1202 or who have given notice of appearance in person or by attorney.

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252.030. A family allowance commences on the date of the court's order or such other time as may be provided in the court's order, whether before or after the date of the order, as the court in its discretion determines, but the allowance may not be made retroactive to a date earlier than the date of the decedent's death.

252.040. (a) A family allowance shall terminate no later than the final settlement of the estate or, if the estate is insolvent, no later than one year after the granting of letters.

(b) Subject to subdivision (a), a family allowance shall continue until modified or terminated by the court or until such time as the court may provide in its order.

252.060. The costs of proceedings under this chapter shall be paid by the estate as expenses of administration.

252.070. Notwithstanding Chapter 2 (commencing with Section 916) of Title 13 of Part 2 of the Code of Civil Procedure, the perfecting of an appeal from an order made under this chapter does not stay proceedings under this chapter or the enforcement of the order appealed from if the person in whose favor the order is made gives an undertaking in double the amount of the payment or payments to be made to that person. The undertaking shall be conditioned that if the order appealed from is modified or reversed so that the payment or any part thereof to the person proves to have been unwarranted, the payment or part thereof shall, unless deducted from any preliminary or final distribution ordered in favor of the person, be repaid and refunded into the estate within 30 days after the court so orders following the modification or reversal, together with interest and costs.

#### CHAPTER 5. FAMILY MAINTENANCE

253.010. As used in this chapter, "eligible person" means:

- (a) The surviving spouse of the decedent.
- (b) A minor child of the decedent.
- (c) An adult child of the decedent who was actually dependent in whole or in part upon the decedent for support.

253.020. (a) A petition for family maintenance may be filed by any of the following:

- (1) An eligible person.
- (2) An interested person acting on behalf of an eligible person.

(b) An order for family maintenance may be made only after notice of the hearing on the petition has been given for the period and in the manner required by Section 1200.5 to all of the following:

- (1) All devisees.
- (2) In the case of intestacy, to all known heirs of the decedent.

(3) All persons (or their attorneys, if they have appeared by attorney) who have requested special notice as provided in Section 1202 or who have given notice of appearance in person or by attorney.

253.030. No order for family maintenance may be made in favor of a child of the decedent if the surviving parent of the child will receive by testate or intestate succession either (a) substantially all of the decedent's estate or (b) during the surviving parent's lifetime substantially all of the income from the decedent's estate.

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253.040. In determining whether to order family maintenance and in determining the amount of family maintenance to be awarded, the court shall consider all of the facts and circumstances of the particular case including, but not limited to, the following:

(a) The needs of the decedent's heirs or devisees whose interests would be adversely affected by an order for family maintenance.

(b) The needs of the eligible person in whose favor the order is to be made, taking into account all of the following:

(1) Property otherwise passing to the person from the decedent's estate, whether under the decedent's will or by intestate succession.

(2) Property or benefits provided for the person by the decedent, including but not limited to insurance, death benefits, retirement benefits, joint tenancy, trust, or inter vivos gift.

(3) Other property and income that the person has or is likely to receive in the future.

(c) The extent of support, if any, that was provided to the person by the decedent before the decedent's death.

(d) If the eligible person is a surviving spouse of the decedent, the circumstances set forth in Section 4801 of the Civil Code.

253.050. (a) A family maintenance order may make provision out of the decedent's estate for one or more eligible persons in the manner and to the extent the court, in its discretion, determines to be appropriate under the circumstances of the particular case. The order shall not be made on any terms that unduly delay the closing of the estate.

(b) The order shall specify such terms, requirements, and conditions as the court determines to be appropriate under the circumstances of the particular case, including but not limited to a provision that requires that:

(1) An amount be set aside out of the estate and paid into court as provided in Section 953.

(2) An amount be set aside out of the estate and paid to a trustee as provided in Section 953.1.

(3) An amount be paid directly to an adult person for whose benefit the order is made or, in the case of a minor or person for whom a conservator of the estate may be appointed, in the manner provided in Division 4 (commencing with Section 1400).

(4) The decedent's personal representative purchase an annuity for one or more eligible persons.

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253.060. (a) If the court orders an amount to be set aside out of the estate and paid into court as provided in Section 953, the court may modify its order as provided in Section 572 of the Code of Civil Procedure.

(b) If the court orders an amount to be set aside out of the estate and paid to a trustee as provided in Section 953.1, the court may modify its order so long as the trust continues.

(c) Except as provided in subdivisions (a) and (b), the court may modify an order made under this chapter until the final settlement of the estate.

(d) A petition for modification may be filed by any interested person and shall be made on the grounds that there has been a significant change in circumstances since the court's prior order. Notice of the hearing of the petition for modification shall be given to the same persons and in the same manner as notice of hearing on an initial petition. In determining a petition for modification, the court shall consider the matters the court would consider in the case of an initial petition, but the court shall not modify the prior order unless the court determines that there has been a significant change in circumstances since the court's prior order.

253.070. (a) Notwithstanding Chapter 2 (commencing with Section 916) of Title 13 of Part 2 of the Code of Civil Procedure, the perfecting of an appeal from an order made under this chapter does not stay proceedings under this chapter or the enforcement of the order appealed from if the person in whose favor the order is made gives an undertaking in double the amount of the payment or payments to be made to that person. The undertaking shall be conditioned that if the order appealed from is modified or reversed so that the payment or any part thereof to the person proves to have been unwarranted, the payment or part thereof shall, unless deducted from any preliminary or final distribution ordered in favor of the person, be repaid and refunded into the estate within 30 days after the court so orders following the modification or reversal, together with interest and costs.

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CHAPTER 6. SPOUSE AND CHILDREN UNPROVIDED  
FOR IN WILL

Article 1. Omitted Spouse

254.010. Except as provided in Section 254.020, if a testator fails to provide by will for his or her surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive a share in the estate consisting of the following property in the estate:

(a) The one-half of the community property that belongs to the testator under Section 110.010.

(b) The one-half of the quasi-community property that belongs to the testator under Section 110.020.

(c) All of the separate property of the testator if the testator dies leaving neither issue, parent, brother, sister, nor issue of a brother or sister.

(d) A share of the separate property of the testator equal to whichever of the following is the greater amount if the testator dies leaving surviving issue, parent, brother, sister, or issue of a brother or sister:

(1) One-half of the separate property of the testator.

(2) All of the separate property of the testator which does not pass to the testator's surviving issue, parent, brother, sister, or

issue of a brother or sister, under the testator's will or under Section 254.110.

254.020. The spouse does not receive a share of the estate under Section 254.010 if any of the following is established:

(a) The testator's failure to provide for the spouse in the will was intentional and that intention appears from the will.

(b) The testator provided for the spouse by transfer outside the will and the intention that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or by other evidence.

(c) The spouse made a valid agreement waiving the right to share in the testator's estate.

254.030. In satisfying a share provided by this article, the devises made by the will abate as provided in Chapter 13 (commencing with Section 750) of Division 3.

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#### Article 2. Pretermitted Children

254.110. Except as provided in Section 254.120, if a testator fails to provide in his or her will for a child of the testator born or adopted after the execution of the will:

(a) If the testator had one or more children at the time the will was executed, the child born or adopted after the execution of the will shall receive a share in the estate equal in amount to the average of the amounts received under the will (after the apportionment provided for in Section 254.140 has been made) by the testator's other children who existed at the time the will was executed.

(b) If the testator did not have any children at the time the will was executed, the child born or adopted after the execution of the will shall receive a share in the estate equal in value to that which the child would have received if the testator had died intestate.

254.120. A child does not receive a share of the estate under Section 254.110 if either of the following is established:

(a) The testator's failure to provide in his or her will for the child was intentional and that intention appears from the will or is shown by statements of the testator or by other evidence.

(b) The testator provided for the child by transfer outside the will and the intention that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or by other evidence.

254.130. If at the time of execution of the will the testator fails to provide in the will for a living child solely because the testator believes the child to be dead or is unaware of the birth of the child, the child shall be deemed for the purposes of this article to be a child born after the execution of the will.

254.140. (a) Except as provided in subdivision (b), in satisfying a share of the estate as required by Section 254.110:

(1) The share shall first be taken from the testator's estate not disposed of by will, if any.

(2) If that is not sufficient, so much as may be necessary to satisfy the share shall be taken from all the devisees in proportion to the value they may respectively receive under the testator's will.

(b) If the obvious intention of the testator in relation to some specific devise or other provision of the will would be defeated by the application of subdivision (a), the specific devise or provision may be exempted from the apportionment under subdivision (a), and a different apportionment, consistent with the intention of the testator, may be adopted.

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#### PART 4. ESCHEAT OF DECEDENT'S PROPERTY

##### CHAPTER 1. GENERAL PROVISIONS

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.

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

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.

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.

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.

5094

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.

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.

## CHAPTER 2. RIGHT 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; 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.

(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, regardless of the amount of the claim, 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.

SEC. \_\_\_\_\_. (a) Except as provided in subdivisions (b) and (c), this act becomes operative on January 1, 1985.

(b) After the effective date of this act, the Judicial Council and the Secretary of State may adopt any forms necessary so that the forms may be used when this act becomes operative.

(c) After the effective date of this act, the courts may adopt any rules necessary so that the rules will be effective when this act becomes operative.

## DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

## PART 1. PRELIMINARY PROVISIONS

§ 1. Short title

Comment. Section 1 continues former Section 1.

§ 2. Continuation of existing law; construction of provisions drawn from Uniform Probate Code

Comment. Subdivision (a) of Section 2 continues the substance of former Section 2. Subdivision (b) is new and recognizes that some provisions of this code are the same in substance as the provisions of the Uniform Probate Code.

§ 3. Application of certain provisions where decedent died before January 1, 1985

Comment. Section 3 limits the application of certain portions of this code to cases where the decedent died after the operative date. The introductory clause makes clear that the section is subject to specific exceptions. See, e.g., Sections 114.050(c) (survival under life or accident insurance), 208.050(b) (filing requirement for Secretary of State's certificate of search for notice of will).

Section 3 supersedes former Section 3. The former section is obsolete.

§ 4. Effect of headings in code

Comment. Section 4 continues the substance of former Section 4.

§ 5. Certified mail equivalent of registered mail

Comment. Section 5 is the same in substance as former Section 5.

§ 6. Construction of code

Comment. Section 6 continues former Section 6.

§ 7. References to statute

Comment. Section 7 continues former Section 7.

§ 8. Reference to division, part, chapter, article, section, or part of section

Comment. Section 8 continues former Section 8.

§ 9. Construction of tenses

Comment. Section 9 continues former Section 9.

§ 10. Construction of singular and plural

Comment. Section 10 continues former Section 10.

§ 11. Severability

Comment. Section 11 continues former Section 11.

§ 12. Construction of "shall" and "may"

Comment. Section 12 is new.

2932

PART 2. WORDS AND PHRASES DEFINED

§ 100.010. Application of definitions

Comment. Section 100.010 is new. Some definitions in this part apply to the entire Probate Code. See, e.g., Sections 100.060 ("community property") and 100.380 ("quasi-community property").

§ 100.015. Account

Comment. Section 100.015 is the same in substance as Section 6-101(1) of the Uniform Probate Code.

§ 100.020. Annulment of marriage

Comment. Section 100.020 is new.

§ 100.030. Beneficiary

Comment. Section 100.030 is the same as Section 1-201(2) of the Uniform Probate Code.

§ 100.040. Child

Comment. Section 100.040 is the same as Section 1-201(3) of the Uniform Probate Code.

3063

§ 100.050. [Reserved]

§ 100.060. Community property

Comment. Section 100.060 supplements the definition of community property in Civil Code Section 5110. Under Section 100.060 community property acquired while domiciled in another community property jurisdiction is treated as community property in California even though the property might not have been community if acquired while domiciled in California. For example, property is community property under Section 100.060 if it is the income of separate property and the income of separate property is community property under the laws of the place where the spouse owning the separate property is domiciled at the time the income is earned. Thus, Section 100.060 ensures generally comparable treatment of the property in California to that given it in the other community property jurisdiction and fills a gap in the quasi-community property law. See Section 100.380 ("quasi-community property" defined). Section 100.060 applies whether the property is acquired before or after the operative date of the section. The reference in Section 100.060 to substantially equivalent types of marital property is intended to cover possible adoption in other jurisdictions of the Uniform Marital Property Act or other laws establishing a community property regime. See also Sections 100.320 ("personal property" defined), 100.390 ("real property" defined).

§ 100.070. [Reserved]

§ 100.080. [Reserved]

§ 100.090. Devise

Comment. Section 100.090 is the same in substance as Section 1-201(7) of the Uniform Probate Code.

§ 100.100. Devisee

Comment. Section 100.100 is the same in substance as Section 1-201(8) of the Uniform Probate Code.

§ 100.110. Dissolution of marriage

Comment. Section 100.110 is new.

§ 100.120. [Reserved]

3064

§ 100.130. Family allowance

Comment. Section 100.130 is new.

§ 100.140. Family maintenance

Comment. Section 100.140 is new.

§ 100.150. Financial institution

Comment. Section 100.150 is the same as a portion of Code of Civil Procedure Section 680.200.

§ 100.160. [Reserved]

§ 100.170. [Reserved]

§ 100.180. [Reserved]

§ 100.190. Heirs

Comment. Section 100.190 is the same in substance as Section 1-201(17) of the Uniform Probate Code. See also Section 100.470 ("surviving spouse" defined).

§ 100.200. [Reserved]

§ 100.210. [Reserved]

3065

§ 100.220. Interested person

Comment. Section 100.220 is the same in substance as Section 1-201(20) of the Uniform Probate Code.

§ 100.230. Issue

Comment. Section 100.230 is the same in substance as Section 1-201(21) of the Uniform Probate Code.

§ 100.240. [Reserved]

§ 100.250. [Reserved]

§ 100.260. [Reserved]

§ 100.270. [Reserved]

§ 100.280. [Reserved]

§ 100.290. [Reserved]

§ 100.300. Parent

Comment. Section 100.300 is the same as Section 1-201(28) of the Uniform Probate Code.

§ 100.310. Person

Comment. Section 100.310 is drawn from Section 1-201(29) of the Uniform Probate Code. The language of a portion of paragraph (27) of Section 1-201 of the Uniform Probate Code defining "organization" is substituted for the word "organization" in paragraph (29) of that section.

3069

§ 100.320. Personal property

Comment. Section 100.320 is consistent with the last sentence of Civil Code Section 5110. See also Section 100.390 ("real property" defined).

§ 100.330. [Reserved]

§ 100.340. Probate homestead

Comment. Section 100.340 is new.

§ 100.350. Property

Comment. Section 100.350 is the same as Section 1-201(33) of the Uniform Probate Code.

§ 100.360. [Reserved]

§ 100.370. [Reserved]

§ 100.380. Quasi-community property

Comment. Section 100.380 continues the substance of portions of former Section 201.5, except that community property under the laws of another jurisdiction is classified as community rather than quasi-community property. See Section 100.060 ("community property" defined) and the Comment to that section. See also Sections 100.320 ("personal property" defined), 100.390 ("real property" defined).

§ 100.390. Real property

Comment. Section 100.390 is new and is consistent with the last sentence of Civil Code Section 5110. See also Section 100.320 ("personal property" defined).

§ 100.400. Security

Comment. Section 100.400 is the same as Section 1-201(37) of the Uniform Probate Code.

3073

§ 100.410. [Reserved]

§ 100.420. [Reserved]

§ 100.430. State

Comment. Section 100.430 is the same as Section 1-201(40) of the Uniform Probate Code.

§ 100.440. [Reserved]

§ 100.450. [Reserved]

§ 100.460. [Reserved]

§ 100.470. Surviving spouse

Comment. Section 100.470 is drawn from Section 2-802 of the Uniform Probate Code. Subdivisions (b) and (c) deal with the problem of a divorce or annulment which is not recognized in California, and apply an estoppel principle against the surviving spouse. These provisions are consistent with prior California law. See, e.g., *Spellens v. Spellens*, 49 Cal.2d 210, 317 P.2d 613 (1957) (estoppel to deny validity of marriage); *Estate of Atherley*, 44 Cal. App.3d 758, 764, 119 Cal. Rptr. 41 (1975) (recognizing principle but declining to apply it). See also Sections 100.020 ("annulment of marriage" defined), 100.110 ("dissolution of marriage" defined).

§ 100.480. Totten trust account

Comment. Section 100.480 is the same in substance as Section 6-101(14) of the Uniform Probate Code. See also Section 100.015 ("account" defined).

§ 100.490. Trust

Comment. Section 100.490 is the same in substance as Section 1-201(45) of the Uniform Probate Code.

§ 100.500. Trustee

Comment. Section 100.500 is the same as Section 1-201(46) of the Uniform Probate Code.

3412

§ 100.510. [Reserved]

§ 100.520. Will

Comment. Section 100.520 is the same as Section 1-201(48) of the Uniform Probate Code.

PART 3. GENERAL PROVISIONS

CHAPTER 1. EFFECT OF DEATH OF MARRIED PERSON  
ON COMMUNITY AND QUASI-COMMUNITY PROPERTY

§ 110.010. Community property

Comment. Section 110.010 continues the substance of a portion of former Section 201. The decedent's half of the community property is subject to the testamentary disposition of the decedent (Section 200.020) and, in the absence of testamentary disposition, goes to the surviving spouse (Section 220.020). As to the liability of the surviving spouse for debts of the deceased spouse chargeable against community property, see Section 649.4. See also Sections 100.060 ("community property" defined), 110.050 (community property held in revocable trust).

§ 110.020. Quasi-community property

Comment. Section 110.020 continues the substance of a portion of former Section 201.5. The decedent's half of the quasi-community property is subject to the testamentary disposition of the decedent (Section 200.020) and, in the absence of testamentary disposition, goes to the surviving spouse (Section 220.020).

Former Section 201.7 qualified the rule that upon the death of a married person one-half of the decedent's quasi-community property belongs to the surviving spouse. Former Section 201.7 required the surviving spouse to elect to take under the decedent's will or against the will unless it appeared by the will that the testator intended that the surviving spouse might take both under the will and against it. The rule of former Section 201.7 is not continued. Under Section 110.020, the rule for quasi-community property is the same as for community property. The surviving spouse is not forced to an election unless the decedent's will expressly so provides or unless such a requirement should be implied to avoid thwarting the testator's apparent intent. See 7 B. Witkin, Summary of California Law Wills and Probate §§ 21-22, at 5542-44 (8th ed. 1974).

As to the liability of the surviving spouse for debts of the deceased spouse chargeable against quasi-community property, see Section 649.4. See also Section 100.380 ("quasi-community property" defined).

§ 110.030. Recapture by surviving spouse of certain quasi-community property

Comment. Section 110.030 continues the substance of the first and third sentences of former Section 201.8. The second sentence of former Section 201.8 which required the surviving spouse to elect to take under or against the decedent's will is not continued. Under the law as revised, the rule for quasi-community property is the same as for community property: The surviving spouse is not forced to an election unless the decedent's will expressly so provides or unless such a requirement should be implied to avoid thwarting the testator's apparent intent. See 7 B. Witkin, Summary of California Law Wills and Probate §§ 21-22, at 5542-44 (8th ed. 1974).

Section 110.030 does not apply to transfers for which a consideration of substantial value is received nor does it reach an outright transfer, even though wholly gratuitous, under which no interest in or power over the property is retained by the transferor.

Section 110.030 provides that a transfer may be set aside only if the decedent made it without receiving in exchange a consideration of "substantial" value. Where the consideration is not substantial and the transfer is set aside, no provision is made for return of the insubstantial consideration given by the transferee when property is restored to the decedent's estate because only one-half of the property transferred is required to be restored. It is not expected that a transfer will be set aside under the statute if the transferee gave a consideration equal to one-half or more of the value of the property received. Thus, in cases in which the transfer is set aside the one-half which the transferee keeps will be at least equal in value to any consideration given.

The provision of Section 110.030 that only one-half of the property transferred is to be restored is applied when the decedent dies intestate as well as when the decedent dies testate. This is because the decedent has manifested an intention to deprive the surviving spouse of the property. The intent of the intestate decedent should be given effect to the extent he or she could have accomplished the same result by will.

Section 110.030 provides that all of the property restored to the estate belongs to the surviving spouse pursuant to Section 110.020. Such property is, in effect, the one-half which the surviving spouse could have claimed against the decedent's will. The one-half which the transferee is permitted to retain is, in effect, the one-half which the decedent could have given to the transferee by will. The surviving spouse is entitled to all of the first half.

Section 110.030 provides that the property shall be restored to the decedent's estate rather than that the surviving spouse may recover it directly from the transferee. This is to make the property available to creditors of the decedent to the extent that it would have been available to them if no inter vivos transfer had been made.

Section 110.030 is limited in application to transfers made at a time when the surviving spouse has an expectancy under Section 110.020--i.e., at a time when the transferor is domiciled in California. This is to avoid the application of the statute to transfers made before the transferor moved here, when the transferor could not reasonably have anticipated that the transfer would later be subjected to California law.

§ 110.040. Effect on community and quasi-community property where married person does not survive death of spouse by 120 hours

Comment. Section 110.040 supersedes the first paragraph of former Section 296.4 and extends to quasi-community property the rule formerly applicable only to community property. The introductory clause recognizes that Section 114.050 governs the disposition of life or accident insurance benefits where one spouse is the insured and the other the beneficiary, even if the source of the insurance premiums was community property. This continues the last clause of the first paragraph of former Section 296.4. See also Sections 114.510-114.550 (proceeding to determine whether one spouse survived the other by 120 hours).

§ 110.050. Community property held in certain revocable trusts

Comment. Section 110.050 continues the substance of a portion of former Section 206.

CHAPTER 2. SURVIVING SPOUSE'S RIGHT IN CALIFORNIA  
REAL PROPERTY OF NONDOMICILIARY DECEDENT

§ 110.510. Surviving spouse's right in California real property of nondomiciliary decedent

Comment. Section 110.510 continues former Section 201.6. Section 110.510 gives the surviving spouse the same protected interest in California as the surviving spouse would have under the law of the decedent's domicile. See also Section 100.390 ("real property" defined).

CHAPTER 3. CONTRACTUAL ARRANGEMENTS RELATING TO  
RIGHTS AT DEATH

Article 1. Surviving Spouse's Waiver of Rights

§ 111.010. "Waiver" defined

Comment. Section 111.010 is new; it is adopted for drafting convenience.

28731

§ 111.020. Rights of surviving spouse that may be waived

Comment. Section 111.020 is new and is drawn in part from the first sentence of Section 2-204 of the Uniform Probate Code. Paragraphs (1) and (2) of subdivision (a) permit waiver of property, interests, or benefits that would pass to the spouse making the waiver by intestate succession or by virtue of a will of the other spouse executed before the waiver. Paragraphs (3), (4), and (5) are the same in substance as provisions found in Section 2-204 of the Uniform Probate Code and are consistent with prior California case law. See, *e.g.*, Estate of Howe, 81 Cal. App.2d 95, 183 P.2d 329 (1947) (probate homestead); *In re Estate of Fulton*, 15 Cal. App.2d 202, 59 P.2d 508 (1936) (exempt property); Estate of Brooks, 28 Cal.2d 748, 171 P.2d 724 (1946) (family allowance). Paragraph (6) is new; prior law did not have provisions for family

maintenance. Paragraph (7) is consistent with prior California case law. See *Soares v. Steidtmann*, 130 Cal. App.2d 401, 278 P.2d 953 (1955). Paragraph (8) is comparable to the provision in Section 2-204 of the Uniform Probate Code for waiver of the elective share under the Uniform Probate Code; paragraph (8), is consistent with prior California case law. See 7 B. Witkin, *Summary of California Law Wills and Probate* § 20, at 5541 (8th ed. 1974). Paragraph (9) is included to make clear that a spouse may waive the right to claim as an omitted spouse under Section 254.010. Paragraph (10) is consistent with Section 406 (renunciation by executor).

Subdivision (b) makes clear that this article applies only to the waiver of the rights listed in subdivision (a). The law applicable to the waiver of other rights is not affected by this article.

§ 111.030. Waiver must be in writing and signed by surviving spouse

Comment. Section 111.030 requires that a waiver be in writing and be signed by the surviving spouse in order to be effective under this article. See also Sections 111.040-111.060 (enforcement of waiver), 111.070 (alteration, amendment, or revocation of waiver).

§ 111.040. Waiver enforceable as of right

Comment. Section 111.040 establishes the basic standards of enforceability for a waiver. A waiver is enforceable unless the surviving spouse shows that he or she was not provided a full and complete disclosure of property or was not represented by independent legal counsel at the time of execution. By satisfying the conditions of disclosure and independent counsel, the parties can have certainty that their affairs will be governed in an agreed upon manner. If these conditions are not satisfied (for example, counsel may not have been sought at all or the surviving spouse may not have been separately represented), a waiver may still be enforceable under Section 111.050.

4434

§ 111.050. Waiver enforceable in discretion of court

Comment. Under subdivision (a) of Section 111.050, a waiver that is not enforceable pursuant to Section 110.040 may be enforceable if it is shown that the waiver at the time of execution made a fair and reasonable disposition of the rights of the surviving spouse or the surviving spouse had, or reasonably should have had, an adequate knowledge of the property of the other spouse. However, in both cases, it must also be shown that the surviving spouse understood the effect of and voluntarily executed the waiver agreement.

Subdivision (b) provides an "escape valve" from the liberal standards of enforceability provided by subdivision (a). It permits the court to refuse to enforce all or a portion of the waiver if the court finds that enforcement would be "unconscionable" under the existing facts and circumstances. Satisfaction of the standards of enforceability provided by subdivision (a) should insure in the vast majority of cases that the waiver was fairly made and properly enforceable. However, in the exceptional case, circumstances may have changed in a way that neither party may have contemplated and enforcement of the waiver in its entirety

would now be unconscionable. In short, subdivision (b) provides a measure of flexibility. It should be emphasized, however, that this subdivision is not intended to apply in any but the extraordinary case and never applies where the conditions required by Section 111.040 are met.

4447/NZ

§ 111.060. Effect of waiver of all rights or complete property settlement

Comment. Section 111.060 supersedes former Section 80 and is drawn from the second sentence of Section 2-204 of the Uniform Probate Code.

§ 111.070. Alteration or revocation of waiver

Comment. Section 111.070 precludes alteration or revocation of a waiver by an oral agreement or by a writing executed by only one spouse and prescribes the conditions that must be satisfied if the agreement is to be enforceable. Subdivisions (c)-(e) are adapted from Sections 111.040 and 111.050.

§ 111.080. Validity of waivers and agreements under prior law not affected

Comment. Section 111.080 makes clear that the provisions of this article have no effect on waivers, agreements, or property settlements made prior to the operative date of this article. See also Section 111.020(b) (nothing in article affects or limits the waiver or manner of waiver of rights other than those referred to in subdivision (a) of Section 111.020).

Article 2. Contracts Concerning Will  
or Succession

§ 111.110. Contracts concerning will or succession

Comment. Section 111.110 is the same in substance as Section 2-701 of the Uniform Probate Code and supersedes the last portion of subdivision (6) of Section 1624 of the Civil Code (Statute of Frauds). Subdivision (b) is consistent with prior case law. See Daniels v. Bridges, 123 Cal. App.2d 585, 589, 267 P.2d 343 (1954) (joint will); Lich v. Carlin, 184 Cal. App.2d 128, 133, 7 Cal. Rptr. 555 (1960) (mutual wills).

4448/NZ

Article 3. Provisions in Written Instruments

§ 111.210. Dispositive provisions in written instruments

Comment. Section 111.210 is the same in substance as Section 6-201 of the Uniform Probate Code. The Uniform Probate Code language that any provision referred to in this section is "deemed to be nontestamentary" has been replaced by the language making the provision "not invalid because the instrument does not comply with the requirements for execution of a will." This change is nonsubstantive.

Subdivision (a) makes clear what kinds of transfers on death are valid and is consistent with prior California decisions and statutes applicable to particular kinds of transfers. For example, a contract was upheld that provided that the manager of a business was to receive the business if the manager survived the owner, on the theory that it was additional compensation to the manager and could not be severed from the remainder of the agreement. Estate of Howe, 31 Cal.2d 395, 189 P.2d 5 (1948). The payment of employee death benefits to a designated beneficiary has long been statutorily recognized in California. See, e.g., Gov't Code §§ 21332-21335 (public employees' death benefits). See also Civil Code § 704 (payable-on-death designations in United States bonds and obligations); Fin. Code §§ 852.5, 7604.5, 11203.5, 14854.5, 18318.5 (account subject to payable-on-death designation); Prob. Code § 206.510 (designation of trustee as payee of life insurance).

Paragraph (2) of subdivision (a) codifies prior case law. See Bergman v. Ornbaun, 33 Cal. App.2d 680, 92 P.2d 654 (1939) (unpaid installments under promissory note cancelled on death of promisee). See generally 7 B. Witkin, Summary of California Law Wills and Probate §§ 87-89, at 5607-09 (8th ed. 1974).

#### CHAPTER 4. [RESERVED]

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#### CHAPTER 5. EFFECT OF HOMICIDE

##### § 113.010. Wills and intestate succession

Comment. This chapter--Sections 113.010-113.070--supersedes former Section 258. This chapter is the same in substance as Section 2-803 of the Uniform Probate Code except that language is added to Section 113.010 so that the anti-lapse statute (Section 204.050) will not substitute the killer's issue for the disqualified killer. This chapter makes three substantive changes in prior law:

(1) Under this chapter, the killer is disqualified from taking from the victim only if the killing is felonious and intentional. Under former Section 258, the killer was disqualified if the killing was accidental but was one within the felony murder rule.

(2) Under Section 113.050, the civil standard of proof (preponderance of the evidence) is used in the civil proceeding to disqualify the killer from taking from the victim. Under prior law, the criminal burden of proof (beyond a reasonable doubt) was used in the civil proceeding. Estate of McGowan, 35 Cal. App.3d 611, 619, 111 Cal. Rptr. 39 (1973).

(3) Under Section 113.050, an acquittal after a criminal trial has no effect in a subsequent civil proceeding. Under former Section 258, an acquittal was given conclusive effect in the later civil proceeding.

Under paragraph (3) of subdivision (a), one who feloniously and intentionally kills a spouse is entitled to no share of the decedent's quasi-community property, since for most purposes the decedent's quasi-community property is treated as the decedent's separate property during the decedent's lifetime. See 7 B. Witkin, Summary of California Law Community Property § 125, at 5219 (8th ed. 1974). Under paragraph (2) of subdivision (a), however, the spousal killer is disqualified from taking the decedent's half of the community property by intestate succes-

sion, but the killer's one-half ownership interest in the community property (see Civil Code § 5105) is not affected.

28728

§ 113.020. Joint assets

Comment. See the Comment to Section 113.010. See also Sections 100.015 ("account" defined), 100.150 ("financial institution" defined).

§ 113.030. Life insurance and beneficiary designations

Comment. Under Section 113.030, if the killer is treated as having predeceased the decedent for the purpose of life insurance or other contractual benefits, the killer's heirs are similarly disqualified. Meyer v. Johnson, 115 Cal. App. 646, 2 P.2d 456 (1931). Cf. Estate of Jeffers, 134 Cal. App.3d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1982) (killer may not designate alternate beneficiary of insurance proceeds). See also the Comment to Section 113.010.

§ 113.040. Other cases

Comment. Section 113.040 makes clear that any other acquisition by the killer is treated in accordance with the principles of this chapter. See Estate of Jeffers, 134 Cal. App.3d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1982) (killer may not designate alternate beneficiary of insurance proceeds).

§ 113.050. Determination of whether killing was felonious and intentional

Comment. See the Comment to Section 113.010.

7828

§ 113.060. Good faith purchasers

Comment. See the Comment to Section 113.010.

§ 113.070. Protection of obligors

Comment. See the Comment to Section 113.010. See also Section 100.150 ("financial institution" defined).

CHAPTER 6. REQUIRED PERIOD OF SURVIVAL TO TAKE AS SURVIVOR

Article 1. 120-Hour Survival Rule

§ 114.010. 120-hour survival rule

Comment. Section 114.010 supersedes former Section 296 and adopts a new 120-hour survival rule, drawn from Sections 2-104 and 2-601 of the Uniform Probate Code. The introductory clause recognizes that Section 114.010 has limited application. Section 114.020 provides that this

article does not apply to cases covered by Sections 110.040 (community and quasi-community property), 204.030 or 204.050 (wills), or 220.040 (survival of heirs). Other provisions of this article provide rules that apply to particular cases. See Sections 114.030 (survival of beneficiaries), 114.040 (survival of joint tenants), 114.050 (survival of insurance beneficiaries). The rule provided by Section 114.010 may be varied by a provision in the governing instrument. See Section 114.020. See also Sections 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

#### § 114.020. Application of article

Comment. Subdivision (a) of Section 114.020 makes clear that the provisions of this article do not apply in cases where Section 110.040 (effect on community and quasi-community property where married person does not survive death of spouse by 120 hours), 204.030 and 204.050 (wills), or 220.040 (intestate succession) applies.

Subdivision (b) provides that the distribution provision of a trust, deed, contract of insurance, or other instrument controls if it results in a different distribution of property than that provided for in this article. Subdivision (b) continues the substance of former Section 296.6 but omits the reference to "wills" and substitutes "trust" for "living trusts" (wills now being covered by Sections 204.030 and 204.050), adds language drawn from Section 2-601 of the Uniform Probate Code, and includes the substance of the 1953 revision of Section 6 of the Uniform Simultaneous Death Act. The 1953 revision, which was not adopted in California, inserted the phrase "or any other situation" and added the clause which appears as the last portion of clause (2) of subdivision (b) of Section 114.020.

8354

#### § 114.030. Survival of beneficiaries

Comment. Subdivision (a) of Section 114.030 is drawn from the first sentence of Section 2 of the Uniform Simultaneous Death Act, as Section 2 was revised in 1953, but the 120-hour survival rule is new. Subdivision (b) supersedes former Section 296.1. See also Sections 114.020 (provision of governing instrument prevails), 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

#### § 114.040. Survival of joint tenants

Comment. Section 114.040 supersedes former Section 296.2. The rule governing the dividing of the property is the same as under former law, but the 120-hour survival requirement is new. See also Sections 114.020 (provision of governing instrument prevails), 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours). Subdivision (d) makes clear, for example, that a joint bank account or a similar deposit account is not tied up as a consequence of this article during the 120-hour period after one joint account holder dies. See also Sections 100.015 ("account" defined), 100.150 ("financial institution" defined).

§ 114.050. Life or accident insurance

Comment. Section 114.050 supersedes former Section 296.3. The rule provided by this section is subject to contrary provisions in the insurance contract. See Section 114.020. See also Sections 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

Article 2. Proceedings to Determine Survival

§ 114.510. Petition for purpose of determining survival

Comment. Section 114.510 is a new provision that refers to various provisions that present an issue of survivorship. Sections 114.510-114.550 are drawn from former Sections 296.41 and 296.42 with modifications in light of the 120-hour survival rule.

9943

§ 114.520. Persons authorized to file petition

Comment. Section 114.520 continues the substance of a portion of the first sentence of former Section 296.41.

§ 114.530. Court where petition to be filed

Comment. Subdivision (a) of Section 114.530 continues the substance of a portion of the first sentence of former Section 296.41. Subdivision (b) continues the substance of the last sentence of former Section 296.42.

§ 114.540. Notice of hearing

Comment. The first three sentences of Section 114.540 are drawn from a portion of former Section 296.41. The last sentence is drawn from a portion of the first sentence of former Section 296.42.

§ 114.550. Hearing, determination, order

Comment. Section 114.550 continues the substance of a portion of former Section 296.42 with modifications in light of the 120-hour survival rule.

07440

DIVISION 2. WILLS AND INTESTATE SUCCESSION

PART 1. WILLS

CHAPTER 1. GENERAL PROVISIONS

§ 200.010. Who may make a will

Comment. Section 200.010 continues the substance of a portion of the first sentence of former Section 20 and all of former Section 21 and is the same in substance as Section 2-501 of the Uniform Probate Code.

Note. In a separate recommendation, the Law Revision Commission has proposed that an emancipated minor be authorized to make a will. See Recommendation Relating to Emancipated Minors, 16 Cal. L. Revision Comm'n Reports \_\_\_\_\_ (1982).

§ 200.020. Property subject to disposition by will

Comment. Subdivision (a) of Section 200.020 continues a portion of the first sentence of former Section 20. Subdivision (b) continues a portion of former Sections 21 and 201. Subdivision (c) continues a portion of former Section 201.5.

§ 200.030. Who may take a disposition by will

Comment. Section 200.030 continues the substance of former Section 27, but omits the obsolete reference in the former section to repealed provisions (former Sections 259-259.2). For other provisions authorizing various entities to accept testamentary gifts, see, e.g., Cal. Const. art. 9, § 9 (University of California); Cal. Const. art. 20, § 2 (Stanford University and Huntington Library); Corp. Code § 10403 (corporation for prevention of cruelty to children or animals); Educ. Code §§ 19174 (county library), 33332 (State Department of Education), 35273 (school district), 70028 (California Maritime Academy); Harb. & Nav. Code §§ 6074 (harbor district), 6294 (port district), 6894 (river port district); Health & Safety Code §§ 8985, 9000 (public cemetery district), 32121 (hospital district); Pub. Res. Code §§ 5101 (monuments in memory of California pioneers), 5158 (park commissioners).

CHAPTER 2. EXECUTION OF WILLS

§ 201.010. Execution of witnessed will

Comment. Section 201.010 is the same in substance as Section 2-502 of the Uniform Probate Code and supersedes former Section 50. Section 201.010 substantially relaxes the formalities required under former Section 50 by eliminating the requirements (1) that the testator's signature be "at the end" of the will, (2) that the testator "declare" to the witnesses that the instrument is his or her will, (3) that the witnesses' signatures be "at the end" of the will, (4) that the testator "request" the witnesses to sign the will, (5) that the witnesses sign the will in the testator's presence, and (6) that the witnesses have been "present at the same time."

The introductory clause of Section 201.010 recognizes that the validity of the execution of a will may be determined pursuant to some other provision of this part. See Sections 201.020 (holographic will), 201.040 (will valid under law of another jurisdiction), 205.210 (California statutory will), 210.020-210.060 (international will).

08933

§ 201.020. Holographic will

Comment. Section 201.020 continues former Section 53. Subdivision (a) is the same in substance as Section 2-503 of the Uniform Probate Code. Subdivision (b) is not found in the Uniform Probate Code. Paragraph

(1) of subdivision (b) is a clarifying provision designed to deal with the situation where the holographic will and another will have inconsistent provisions as to the same property or otherwise have inconsistent provisions. To deal specifically with this situation, paragraph (1) requires either that the holographic will be dated or that the time of its execution be shown to be after the date of execution of the other will. If the date of execution of the holographic will cannot be established by a date in the will or by other evidence to be after the date of execution of the other will, the holographic will is invalid to the extent that the date of its execution is material in resolving the issue of whether it or the other inconsistent will is to be given effect. Where the conflict between the holographic will and other will is to only a portion of the property governed by the holographic will, the invalidity of the holographic will as to the property governed by the other will does not affect the validity of the holographic will as to other property. Paragraph (1) also covers the situation where both wills are holographic and undated and have inconsistent provisions on a particular matter; in such a case, Section 201.020 applies to both wills. If it cannot be established that one of the holographic wills was executed after the other, neither will is valid insofar as the two wills are inconsistent; but, in such case, the validity of the consistent provisions of the two wills is not affected by the failure to establish time of execution.

Paragraph (2) of subdivision (b) applies to the situation where the testator lacked testamentary capacity at any time during which the holographic will might have been executed. Thus, if the testator lacks testamentary capacity at the time of his or her death and the holographic will is found with the testator's personal effects, the will is invalid unless it is established that the will was executed at a time when the testator did have testamentary capacity. This could be established, for example, by witnesses who saw the testator make the holographic will and can testify that the testator had testamentary capacity at that time. Likewise, where a testator lacked testamentary capacity for a period prior to death and the undated holographic will is found in the testator's safe deposit box, it could be established that the will was executed at a time when the testator did have testamentary capacity if it were shown that the testator did not have access to the safe deposit box at any time after the testator lost the capacity to execute a will. Paragraph (2) does not invalidate a holographic will if it could not have been executed at a time when the testator lacked testamentary capacity. For example, if the testator becomes ill and requires hospitalization, loses his or her testamentary capacity and dies during the hospitalization period, and the testator's holographic will is found at the testator's home, the will must have been executed before the testator's hospitalization and therefore at a time when the testator had testamentary capacity.

09028

§ 201.030. Who may witness a will

Comment. Section 201.030 is the same as Section 2-505 of the Uniform Probate Code and supersedes former Sections 51 and 52. Section 201.030 changes the rule of former Section 51 which disqualified a subscribing witness from taking under the will unless there were two other disinterested subscribing witnesses. Under Section 201.030, a

person may be a witness to a will without forfeiting any benefits under the will. Section 201.030 is consistent with former Section 52 (testator's creditor may be competent witness).

§ 201.040. Choice of law as to execution of will

Comment. Section 201.040 is the same in substance as Section 2-506 of the Uniform Probate Code and supersedes former Section 26. The references to the provisions relating to California statutory wills and international wills are added.

CHAPTER 3. REVOCATION AND REVIVAL

§ 202.010. Revocation by subsequent will or by act

Comment. Section 202.010 is the same in substance as Section 2-507 of the Uniform Probate Code and supersedes former Sections 72 and 74. The provision of former Section 74 requiring two witnesses to prove revocation of a will by someone other than the testator is not continued. Section 202.010 is otherwise consistent with former Sections 72 and 74. See also Section 351.5 (lost will not presumed revoked).

§ 202.020. Revocation of will executed in duplicate

Comment. Section 202.020 continues the substance of former Section 76.

§ 202.030. Revocation by annulment or dissolution of marriage; no revocation by other changes of circumstances

Comment. Section 202.030 is the same in substance as Section 2-508 of the Uniform Probate Code. Section 202.030 changes the former case law rule that dissolution or annulment of marriage has no effect on the will of either spouse. See In re Estate of Patterson, 64 Cal. App. 643, 646, 222 P. 374 (1923); 7 B. Witkin, Summary of California Law Wills and Probate § 150, at 5666 (8th ed. 1974). See Sections 100.020 ("annulment of marriage" defined), 100.110 ("dissolution of marriage" defined). See also Section 205.260 (California statutory will); Civil Code § 4352 (required notice in judgment of dissolution or nullity).

§ 202.040. Revival of revoked will

Comment. Section 202.040 is the same in substance as Section 2-509 of the Uniform Probate Code and supersedes former Section 75. Section 202.040 sets forth a presumption against revival of a previously revoked will, the same as under former Section 75. However, unlike former Section 75, where revocation of the second will is by an act such as destruction, Section 202.040 permits the testator's intent that the first will be revived to be shown by extrinsic evidence, thus producing results generally more consistent with the testator's intent.

## CHAPTER 4. REFERENCE TO MATTERS OUTSIDE THE WILL

§ 203.010. Incorporation by reference

Comment. Section 203.010 is the same as Section 2-510 of the Uniform Probate Code. Section 203.010 codifies the doctrine of incorporation by reference which was recognized by prior California case law. See 7 B. Witkin, Summary of California Law Wills and Probate § 143, at 5660 (8th ed. 1974).

§ 203.020. Events of independent significance

Comment. Section 203.020 is the same as Section 2-512 of the Uniform Probate Code. Section 203.020 codifies the doctrine of acts and events of independent significance. See generally 7 B. Witkin, Summary of California Law Wills and Probate § 147, at 5662-63 (8th ed. 1974).

## CHAPTER 5. RULES OF CONSTRUCTION OF WILLS

Article 1. General Provisions§ 204.010. Intention of testator

Comment. Section 204.010 is the same in substance as the first sentence of Section 2-603 of the Uniform Probate Code.

§ 204.015. Rules of construction apply unless will indicates contrary intention

Comment. Section 204.015 is drawn from the second sentence of Section 2-603 of the Uniform Probate Code. Section 204.015 recognizes that some sections in this chapter contain their own provisions governing the manner in which the statutory rule may be varied by language in the will. See, e.g., Sections 204.020 (choice of law as to meaning and effect of will), 204.030 (120-hour survival requirement).

§ 204.020. Choice of law as to meaning and effect of wills

Comment. Section 204.020 supersedes former Section 100 and is the same in substance as Section 2-602 of the Uniform Probate Code. The reference in Section 2-602 of the Uniform Probate Code to elective share is replaced by a reference to the rights of the surviving spouse in community and quasi-community property. Subdivision (b) is drawn from the reference in Section 2-602 of the Uniform Probate Code to provisions relating to elective share, exempt property, and allowances; subdivision (b) includes reference to the new family maintenance provisions of California law. See also Section 100.470 (definition of "surviving spouse").

§ 204.030. Requirement that devisee survive testator by 120 hours

Comment. Section 204.030 supersedes former Sections 296 and 296.6 insofar as those sections applied to wills. The first sentence of subdivision (a) and all of subdivision (b) of Section 204.030 are the

same in substance as Section 2-601 of the Uniform Probate Code except that subdivision (b) omits the UPC provision that made the 120-hour survival rule not applicable if the will merely requires the devisee to "survive the testator." Under Section 204.030, the 120-hour survival rule applies unless the will either deals explicitly with simultaneous deaths or deaths in a common disaster or requires survival for a longer or shorter period stated in the will in order to take under the will. The second sentence of subdivision (a) is drawn from the second sentence of Section 2-104 of the Uniform Probate Code.

The requirement that the devisee survive the testator by 120 hours is new to California law. If the devisee fails to survive for the required period and leaves issue, Section 204.050 (anti-lapse) will substitute the devisee's issue for the devisee unless the will indicates a contrary intention (Section 204.015).

For a provision governing the administration and disposition of community property and quasi-community property where one spouse does not survive the other by 120 hours, see Section 110.040. See also Sections 114.510-114.550 (proceeding to determine whether devisee survived testator by 120 hours).

#### § 204.040. Will passes all property including after-acquired property

Comment. Section 204.040 is the same in substance as Section 2-604 of the Uniform Probate Code and continues the substance of former Sections 120, 121, 125, and 126. The "except" clause of Section 204.040 is taken from former Sections 125 and 126 and is consistent with the Uniform Probate Code. See Uniform Probate Code §§ 2-604, 2-610. Section 204.040 does not apply if a contrary intention is indicated by the will. See Section 204.015.

28729

#### § 204.050. Anti-lapse

Comment. Section 204.050 supersedes former Section 92, which limited the application of the anti-lapse provision to the case of a predeceased devisee who was "kindred" of the testator. Unlike former Section 92, the anti-lapse provisions of Section 204.050 substitute the issue of the predeceased devisee, whether or not the predeceased devisee is related to the testator. This revision makes Section 204.050 consistent with Civil Code Section 1389.4 (powers of appointment). Section 204.050 does not apply if a contrary intention is indicated by the will. See Section 204.015.

As to when a devisee "is treated as if he or she predeceased the testator," see Section 204.030 (requirement that devisee survive testator by 120 hours). The 120-hour survival requirement in Section 204.050 is consistent with the 120-hour survival requirement of Section 204.030. See also Sections 114.510-114.550 (proceeding to determine whether issue of deceased devisee survived the testator).

Section 204.050 provides that, if the issue of the deceased devisee are of unequal degree of kinship to the devisee, the issue take by representation. Section 220.060 prescribes the manner of division where representation is called for. In applying the provisions of Section 204.050 where the issue of the deceased devisee take by representation, the degree of kinship to the deceased devisee determines the shares the issue will receive under the provisions of Section 220.060.

§ 204.060. Failure of testamentary provision

Comment. Section 204.060 is the same in substance as Section 2-606 of the Uniform Probate Code. The rule stated in Section 204.060 may be varied by the testator's will. See Section 204.015. Subdivision (b) of Section 204.060 changes the former California case law rule that if the share of one of several residuary devisees fails, the share passes by intestacy. See, e.g., Estate of Russell, 69 Cal.2d 200, 215-16, 444 P.2d 353, 70 Cal. Rptr. 561 (1968); In re Estate of Kelleher, 205 Cal. 757, 760-61, 272 P. 1060 (1928); Estate of Anderson, 166 Cal. App.2d 39, 42, 332 P.2d 785 (1958).

§ 204.070 [Reserved]

§ 204.080. Construction of generic terms to accord with relationships as defined for intestate succession

Comment. Section 204.080 is the same as Section 2-611 of the Uniform Probate Code and supersedes former Section 108. To the extent that California cases have addressed the matter, Section 204.080 is consistent with prior California law. See 7 B. Witkin, Summary of California Law Wills and Probate §§ 197-200, at 5708-12 (8th ed. 1974). For the rules for determining relationships for purposes of intestate succession, see Sections 220.070, 220.090.

§ 204.090. Scope of disposition to a class; afterborn member of class

Comment. Section 204.090 continues the substance of former Section 123. See generally 7 B. Witkin, Summary of California Law Wills and Probate §§ 194, 201, 204, at 5705-06, 5712, 5715-16 (8th ed. 1974). Subdivision (b) of Section 204.090 is comparable to the rule in intestate succession. See Section 220.080. The rules of Section 204.090 yield to a contrary intent expressed in the testator's will. See Section 204.015.

§ 204.100. Vesting

Comment. Subdivision (a) of Section 204.100 continues former Section 28. Subdivision (b) continues former Section 29. The rules of Section 204.100 yield to a contrary intent expressed in the testator's will. See Section 204.015. This continues prior law. See 7 B. Witkin, Summary of California Law Wills and Probate § 184, at 5696 (8th ed. 1974) (discussing former Section 28); former Section 29 (containing express provision that the section yields to a contrary provision in will). See also Section 100.090 ("devise" means disposition of real or personal property by will).

§ 204.110. Common law rule of worthier title abolished

Comment. Section 204.110 continues the substance of former Section 109. Section 204.110 omits references to a "bequest" which appeared in

former Section 109. As used in Section 204.110, "devise" applies to dispositions by will of both real and personal property. See Section 100.090.

§ 204.120. Direction in will to convert real property into money

Comment. Section 204.120 is the same in substance as former Section 124. This section is declaratory of the common law doctrine of equitable conversion. See In re Estate of Gracey, 200 Cal. 482, 488, 253 P. 921 (1927). See generally 7 B. Witkin, Summary of California Law Equity §§ 118-121, at 5337-40 (8th ed. 1974).

§ 204.130. Death of devisee of limited interest

Comment. Section 204.130 is the same in substance as former Section 140. "Devisee" means a person designated in a will to receive real or personal property. See Section 100.100.

30198

Article 2. Conditional Dispositions in Wills

§ 204.210. Conditional disposition

Comment. Section 204.210 continues the substance of former Section 141.

§ 204.220. Condition precedent

Comment. Section 204.220 continues the substance of former Section 142.

§ 204.230. Condition subsequent

Comment. Section 204.230 continues the substance of former Section 143. See also Section 204.100 (testamentary dispositions, including devises to a person on attaining majority, are presumed to vest at the testator's death).

30694

Article 3. Ascertaining Meaning of Language  
Used in the Will

§ 204.310. Every expression given some effect; intestacy avoided

Comment. Section 204.310 continues the substance of former Section 102. The rules stated in Section 204.310 yield to a contrary intent indicated by the will. See Section 204.015.

§ 204.320. Construction of will as a whole

Comment. Section 204.320 continues the substance of former Section 103 except for the provision of the former section that the last part

must prevail where several parts of a will are absolutely irreconcilable. The rules stated in Section 204.320 yield to a contrary intent indicated by the will. See Section 204.015. See also Section 204.330 (clear and distinct devise).

§ 204.330. Clear and distinct devise

Comment. Section 204.330 continues the substance of former Section 104. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 204.340. Words given their ordinary meaning; technical words

Comment. Section 204.340 continues the substance of former Section 106.

§ 204.350. Words referring to death or survivorship

Comment. Section 204.350 continues the substance of former Section 122. The rule stated in Section 204.350 yields to a contrary intent indicated by the will. See Section 204.015. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

09726

Article 4. Exoneration; Ademption

§ 204.400. No exoneration

Comment. Section 204.400 expands the rule stated in Section 2-609 of the Uniform Probate Code to cover any lien. This expansion makes Section 204.400 consistent with Section 736. Section 204.400 reverses the prior California case law rule that, in the absence of an expressed intention of the testator to the contrary, if the debt which encumbers the devised property is one for which the testator was personally liable, the devisee was entitled to "exoneration," that is, to receive the property free of the encumbrance by having the debt paid out of other assets of the estate. See 7 B. Witkin, Summary of California Law Wills and Probate § 456, at 5895-96 (8th ed. 1974). The rule stated in Section 204.400 may be varied by the testator's will. See Section 204.015. See also Sections 100.090 ("devise" means a disposition of real or personal property by will), 100.350 ("property" defined).

§ 204.410. Change in form of securities

Comment. Section 204.410 is the same in substance as Section 2-607 of the Uniform Probate Code and is generally consistent with prior California case law. See 7 B. Witkin, Summary of California Law Wills and Probate § 220, at 5730-31 (8th ed. 1974). The rules stated in Section 204.410 may be varied by the testator's will. See Section 204.015.

Under Section 204.410, if the testator makes a specific devise of only a portion of the stock the testator owns in a particular company and there is a stock split or stock dividend, the specific devisee is entitled only to a proportionate share of the additional stock received. For example, if the testator owns 500 shares of stock in company A, devises 100 shares to his son, and the stock splits two for one, T's son is entitled to 200 shares, not 600. See the Comment to Uniform Probate Code § 2-607 (1977 version).

§ 204.420. Unpaid proceeds of sale, condemnation, or insurance; property obtained as a result of foreclosure

Comment. Section 204.420 is the same in substance as subdivision (a) of Section 2-608 of the Uniform Probate Code and is generally similar to prior California case law. See, e.g., Estate of Shubin, 252 Cal. App.2d 588, 60 Cal. Rptr. 678 (1967). Cf. Estate of Newsome, 248 Cal. App.2d 712, 56 Cal. Rptr. 874 (1967). See also Sections 100.090 ("devise" defined), 100.350 ("property" defined). The rules stated in Section 204.420 may be varied by the testator's will. See Section 204.015.

The rules of nonademption in Sections 204.420-204.470 are not exclusive, and nothing in these provisions is intended to increase the incidence of ademption in California.

09727

§ 204.430. Sale by conservator; payment of proceeds of specifically devised property to conservator

Comment. Subdivisions (a) and (b) of Section 204.430 are the same in substance as the first sentence of subdivision (b) of Section 2-608 of the Uniform Probate Code and are consistent with prior California case law. See Estate of Packham, 232 Cal. App.2d 847, 43 Cal. Rptr. 318 (1965). See also Sections 100.090 ("devise" defined), 100.350 ("property" defined). The rules stated in Section 204.430 may be varied by the testator's will. See Section 204.015. See also the last sentence of the Comment to Section 204.420.

Subdivision (c) of Section 204.430 revises the corresponding Uniform Probate Code language to refer to the conservatorship being terminated rather than to it being "adjudicated that the disability of the testator has ceased." The application of subdivision (c) turns on whether a conservatorship has been terminated, and not on whether the testator has regained the capacity to make a will. Thus subdivision (c) provides a rule of administrative convenience and avoids the need to litigate the question of whether the conservatee had capacity to make a will after the time of the sale, condemnation, fire, or casualty.

Subdivision (d) of Section 204.430 is the same in substance as the third sentence of subdivision (b) of Section 2-608 of the Uniform Probate Code.

§ 204.440. Ademption by satisfaction

Comment. Subdivisions (a) and (b) of Section 204.440 are the same in substance as Section 2-612 of the Uniform Probate Code and are

consistent with former Section 1050. Subdivision (b) changes the rule under former Section 1052 that, if the value of the property given is not established by the testator or acknowledged by the donee, it is valued as of the date of the gift. Under subdivision (b), the gift is valued as of the time the devisee came into possession or enjoyment of the property or as of the time of death of the testator, whichever occurs first. Thus, if the devisee does not come into possession or enjoyment of the property until a time after the testator's death, the property would be valued as of the date of death. Subdivision (c) continues a provision of former Section 1052, but adds the requirement that, if the donee's acknowledgment expresses the value of the gift, that value is binding on the court only if made contemporaneously with the gift. See also Sections 100.090 ("devise" defined), 100.100 ("devisee" defined), 100.350 ("property" defined). For a comparable rule concerning advancements, see Section 220.100.

§ 204.450. Contract for sale or transfer of specifically devised property

Comment. Section 204.450 is drawn from former Section 77. See also Sections 100.090 ("devise" defined), 100.100 ("devisee" defined), 100.350 ("property" defined). The rule stated in Section 204.450 may be varied by the testator's will. See Section 204.015. See also the last sentence of the Comment to Section 204.420.

09730

§ 204.460. Testator placing charge or encumbrance on specifically devised property

Comment. Section 204.460 continues the substance of a portion of former Section 78. See also Sections 100.090 ("devise" defined), 100.100 ("devisee" defined), 100.350 ("property" defined). The rule stated in Section 204.460 may be varied by the testator's will. See Section 204.015. See also the last sentence of the Comment to Section 204.420.

§ 204.470. Act of testator altering testator's interest in specifically devised property

Comment. Section 204.470 continues the substance of a portion of former Section 78. See also Sections 100.090 ("devise" defined), 100.100 ("devisee" defined), 100.350 ("property" defined).

32801

CHAPTER 6. CALIFORNIA STATUTORY WILL

Article 1. Definitions and Rules of Construction

§ 205.010. Application of definitions and rules of construction

Comment. Section 205.010 continues the substance of the introductory clause of former Section 56.

§ 205.020. Testator

Comment. Section 205.020 continues subdivision (a) of former Section 56.

§ 205.030. Spouse

Comment. Section 205.030 continues subdivision (b) of former Section 56. As to the effect of termination of the marriage by divorce, dissolution, or annulment, after execution of the will, see Section 205.260.

§ 205.040. Executor

Comment. Section 205.040 continues subdivision (c) of former Section 56.

§ 205.045. Trustee

Comment. Section 205.045 continues subdivision (d) of former Section 56.

32802

§ 205.050. Descendants

Comment. Section 205.050 continues subdivision (e) of former Section 56.

§ 205.060. Class designation of "descendants" or "children"

Comment. Section 205.060 continues the substance of subdivision (f) of former Section 56.

205.070. Construction of genders and singular and plural

Comment. Section 205.070 continues subdivision (g) of former Section 56.

§ 205.080. Use of "shall" or "may" in a California statutory will

Comment. Section 205.080 continues the substance of subdivision (h) of former Section 56.

§ 205.090. Manner of distribution to "descendants"

Comment. Section 205.090 continues the substance of subdivision (i) of former Section 56. The rule stated in Section 205.090 is consistent with the general rule concerning taking by representation. See Section 220.060 (representation).

§ 205.100. Person

Comment. Section 205.100 continues subdivision (j) of former Section 56.

Article 2. General Provisions

§ 205.200. Persons who may execute California statutory will

Comment. Section 205.200 continues the substance of former Section 56.1.

32803

§ 205.210. Method of executing California statutory will

Comment. Section 205.210 continues the substance of former Section 56.2 except that the requirement of paragraph (2) of subdivision (a) replaces the former requirement that the witnesses observe the testator signing and sign their names in the presence of the testator. This substitution conforms the provision to the requirement generally applicable to wills. See Section 201.010.

§ 205.220. Two California statutory wills; contents

Comment. Section 205.220 continues the substance of former Section 56.3.

§ 205.230. Effect of selection of more than one property disposition clause; effect of failure to make selection

Comment. Section 205.230 continues former Section 56.4.

§ 205.240. Effect of titles of clauses

Comment. Section 205.240 continues former Section 56.5.

§ 205.250. Revocation; amendment by codicil; additions or deletions on form to be disregarded unless in accordance with instructions

Comment. Section 205.250 continues former Section 56.6.

§ 205.260. Revocation by divorce

Comment. Section 205.260 is a new provision that is drawn from and is consistent with Section 202.030. See the Comment to that section.

32804

Article 3. Form and Full Text of Clauses

§ 205.510. California Statutory Will Form

Comment. Section 205.510 continues former Section 56.7 except that the "Statement of Witnesses" has been revised to conform to the require-

ments of Section 205.210(a)(2) and other technical revisions have been made.

§ 205.515. California Statutory Will With Trust Form

Comment. Section 205.515 continues former Section 56.8, except that the "Statement of Witnesses" has been revised to conform to the requirements of Section 205.210(a)(2) and other technical revisions have been made.

§ 205.520. Full text of paragraph 2.1 of California Statutory Will Form

Comment. Section 205.520 is the same as former Section 56.9.

§ 205.530. Full text of property disposition clauses of California Statutory Will Form

Comment. Section 205.530 continues the substance of former Section 56.10. The limitation in the last paragraph of former Section 56.10 to the laws relating to the succession of separate property "not acquired from a parent, grandparent, or predeceased spouse" has been omitted, the former special provisions relating to succession of property acquired from ancestors not being continued.

§ 205.535. Full text of property disposition clauses of California Statutory Will With Trust Form

Comment. Section 205.535 continues former Section 56.11.

§ 205.540. Mandatory clauses of all California statutory wills

Comment. Section 205.540 continues the substance of former Section 56.12. The phrase "not acquired from a parent, grandparent, or predeceased spouse" has been omitted, the former special provisions relating to succession of property acquired from ancestors not being continued.

§ 205.545. Additional mandatory clauses for California statutory will with trust

Comment. Section 205.545 continues former Section 56.13 with technical revisions. The phrase "not acquired from a parent, grandparent, or predeceased spouse" has been omitted, the former special provisions relating to succession of property acquired from ancestors not being continued.

32808

§ 205.550. Will includes only texts of clauses as they exist when will executed

Comment. Section 205.550 continues the substance of former Section 56.14. See also Section 205.260(d) (effect of divorce on disposition and nomination provisions).

§ 205.560. Law relating to execution of wills and creation of trusts unchanged

Comment. Section 205.560 is drawn from Section 2 of 1982 Cal. Stats. ch. \_\_\_\_ [AB 2452].

09930/NZ

CHAPTER 7. UNIFORM TESTAMENTARY ADDITIONS TO TRUSTS ACT

§ 206.010. Testamentary additions to trusts

Comment. Section 206.010 continues the substance of former Section 170 and is the same in substance as Section 2-511 of the Uniform Probate Code. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 206.020. Effect on prior wills

Comment. Section 206.020 continues the substance of former Section 171. September 17, 1965, was the effective date of former Sections 170-173. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 206.030. Uniform construction

Comment. Section 206.030 continues former Section 172.

§ 206.040. Short title

Comment. Section 206.040 continues former Section 173.

09931

CHAPTER 8. TRUST FOR INSURANCE OR EMPLOYEE BENEFITS

§ 206.500. Definitions

Comment. Subdivision (a) of Section 206.500 is drawn from former Section 175, but the language of paragraph (3) has been substituted for the former reference to the Self Employed Individuals' Tax Retirement Act of 1962. Subdivision (b) is new and is included for convenience in drafting.

§ 206.510. Designation of trustee as beneficiary, payee, or owner

Comment. Section 206.510 continues a portion of former Section 175.

§ 206.520. Requirement of provisions in the will

Comment. Section 206.520 continues former Section 176.

§ 206.530. Payment or transfer to trustee without administration

Comment. Section 206.530 continues former Section 177.

§ 206.540. Extent to which rights and benefits subject to debts of designator

Comment. Section 206.540 continues former Section 178.

§ 206.550. Jurisdiction of court

Comment. Section 206.550 continues the substance of former Section 179.

09933

§ 206.560. Applicability of provisions for administration of testamentary trusts

Comment. Section 206.560 continues former Section 180.

§ 206.570. Appeal

Comment. Section 206.570 continues the substance of former Section 181.

§ 206.580. Absence of qualified trustee

Comment. Section 206.580 continues the substance of former Section 182.

§ 206.590. No effect on other trusts

Comment. Section 206.590 continues a portion of former Section 184.

09936

CHAPTER 9. DEVISE SUBJECT TO UNIFORM GIFTS  
TO MINORS ACT

§ 207.010. Devise to minor under this chapter

Comment. Section 207.010 continues the substance of former Section 186 as amended by 1982 Cal. Stats. ch. \_\_\_ [AB 2393]. See also Section 100.090 ("devise" means disposition of real or personal property by will).

§ 207.020. Applicability of Uniform Gifts to Minors Act

Comment. Section 207.020 continues the substance of former Section 186.1. See also Section 100.090 ("devise" means disposition of real or personal property by will).

§ 207.030. Designation of custodian

Comment. Section 207.030 continues the substance of former Section 186.2. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 207.040. Noncomplying bequest

Comment. Section 207.040 continues the substance of former Section 186.3. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 207.050. Distribution of property

Comment. Section 207.050 continues the substance of former Section 186.4. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 207.060. Successor or alternate custodians; compensation

Comment. Section 207.060 continues the substance of former Section 186.5.

09939

§ 207.070. Successor custodian

Comment. Section 207.070 continues the substance of former Section 186.6. See also Section 100.090 ("devise" means a disposition of real or personal property by will).

§ 207.080. Notice to and participation of custodian

Comment. Section 207.080 continues the substance of former Section 186.7. See also Section 100.100 ("devisee" means a person designated in a will to receive a devise of real or personal property).

§ 207.090. Jurisdiction of court

Comment. Section 207.090 continues the substance of former Section 186.8.

§ 207.100. Not exclusive procedure

Comment. Section 207.100 continues the substance of former Section 186.9.

## CHAPTER 10. FILING NOTICE OF WILL

§ 208.010. Filing notice of will

Comment. Section 208.010 provides a new voluntary procedure for filing a notice of the existence and location of a will. It is anticipated that this procedure will result in finding wills that otherwise might not have been found. Although the registration is voluntary, it should be noted that a search of the records is required. See Sections 208.040, 208.050. This section does not require or permit the filing of the will itself. The procedure provided by this chapter is distinct from that provided under the International Wills Act. See Section 210.100 (registry system for international wills information).

§ 208.020. Filing notice of revocation

Comment. Section 208.020 is new. This section is intended to provide information as to the revocation of a will.

§ 208.030. Filing and indexing of notices; fee

Comment. Section 208.030 is new.

§ 208.040. Release of information

Comment. Subdivision (a) of Section 208.040 is similar to a portion of Section 210.100 in the International Wills Act. Subdivision (b) is drawn in part from Section 210.100 of the International Wills Act. A certificate from the Secretary of State is necessary in proceedings under this code where the existence of a will is relevant, as provided in Section 208.050.

§ 208.050. Filing of certificate in probate and other proceedings

Comment. Subdivision (a) of Section 208.050 makes clear that a petitioner in any proceeding concerning the disposition of property upon death must file a Secretary of State's certificate relating to whether there is notice of a will on file. Subdivision (b) delays the application of this requirement to allow time for a significant number of notices to be filed.

§ 208.060. Regulations

Comment. Section 208.060 is similar to authority provided elsewhere. See, e.g., Code Civ. Proc. §§ 488.375, 488.405 (notice of attachment prescribed by Secretary of State).

§ 208.070. Destruction of obsolete records

Comment. Section 208.070 permits destruction of obsolete records. The Secretary of State is permitted, but not required, to destroy the records.

## CHAPTER 11. [RESERVED]

## CHAPTER 12. UNIFORM INTERNATIONAL WILLS ACT

Comment. Chapter 12 (commencing with Section 210.010) continues the Uniform International Wills Act, formerly set forth in Chapter 2.5 (commencing with Section 60) of Division 1, without substantive change. The following table shows the corresponding sections of this chapter, former law, and the Uniform International Wills Act as set forth in the Uniform Probate Code.

| New Sections | Former Section | Uniform Probate Code<br>Section |
|--------------|----------------|---------------------------------|
| 210.010      | 60             | 2-1001                          |
| 210.020      | 60.1           | 2-1002                          |
| 210.030      | 60.2           | 2-1003                          |
| 210.040      | 60.3           | 2-1004                          |
| 210.050      | 60.4           | 2-1005                          |
| 210.060      | 60.5           | 2-1006                          |
| 210.070      | 60.6           | 2-1007                          |
| 210.080      | 60.7           | 2-1008                          |
| 210.090      | 60.8, para. 1  | 2-1009                          |
| 210.100      | 60.8, para. 2  | 2-1010                          |

For additional discussion, see the Comments following the sections in the Uniform Probate Code.

§ 210.010. Definitions

§ 210.020. Validity of international will

§ 210.030. Requirements of international will

§ 210.040. Additional requirements of international will

§ 210.050. Certificate of authorized person

§ 210.060. Effect of certificate

§ 210.070. Revocation

§ 210.080. Source and construction

§ 210.090. Authorized persons

§ 210.100. Registry system

## PART 2. INTESTATE SUCCESSION

§ 220.010. Intestate estate

Comment. Section 220.010 is the same in substance as Section 2-101 of the Uniform Probate Code and supersedes former Section 200 and the first portion of former Section 220.

§ 220.020. Intestate share of surviving spouse

Comment. Section 220.020 is drawn from Section 2-102A of the Uniform Probate Code.

Subdivision (a) is the same in substance as a portion of former Section 201. Upon the death of a married person, one-half of the community property belongs to the surviving spouse (Section 110.010); in the case of intestate succession, the other one-half of the community property, which belongs to the decedent (Section 110.010), goes to the surviving spouse under subdivision (a) of Section 220.020. See also Section 100.060 (defining "community property"). Subdivision (a) is the same in substance as the Uniform Code provision.

Subdivision (b) is the same in substance as a portion of former Section 201.5. Upon the death of a married person, one-half of the decedent's quasi-community property belongs to the surviving spouse (Section 110.020); in the case of intestate succession, the other one-half of the decedent's quasi-community property, which belongs to the decedent (Section 110.020), goes to the surviving spouse under subdivision (b) of Section 220.020. The quasi-community property recaptured under Section 110.030 does not belong to the decedent even though the property is restored to the decedent's estate; rather it is property that belongs to the surviving spouse. See Section 110.030 and Comment thereto. Accordingly, the surviving spouse does not take the recaptured property by intestate succession. See also Sections 100.380 (defining "quasi-community property"). No provision comparable to subdivision (b) is found in the Uniform Probate Code since that code has no provisions relating to quasi-community property.

Community property and quasi-community property that passes to the surviving spouse under subdivisions (a) and (b) is subject to Sections 649.1 (election to have community and quasi-community property administered) and 649.2 (power to deal with community and quasi-community real property). As to the liability of the surviving spouse for debts of the deceased spouse, see Section 649.4.

Subdivision (c) changes prior California law. Under prior law, the surviving spouse received all of the decedent's separate estate only if the decedent died without leaving surviving issue, parent, brother, sister, or descendant of a deceased brother or sister. See former Sections 221-224. Under subdivision (c), the surviving spouse takes all of the decedent's separate property unless there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse. In the latter case, subdivision (c) gives one-half of the separate property to the surviving spouse and Section 220.030 gives the remaining one-half of the separate property to the issue of the decedent (both those who are also the issue of the surviving spouse and those who are not).

12341

§ 220.030. Intestate share of heirs other than surviving spouse

Comment. Section 220.030 is the same in substance as Section 2-103 of the Uniform Probate Code. Since under Section 220.020 all community property and quasi-community property in the intestate estate passes to the surviving spouse, and all separate property passes to the surviving spouse unless the decedent leaves issue who are not also issue of the surviving spouse, Section 220.030 will apply only to the decedent's separate property, and only in those situations where the decedent

leaves no surviving spouse or leaves a surviving spouse and issue who are not issue of the surviving spouse. See also the Comment to Section 220.020.

Subdivision (a) is consistent with former Section 222 except that the rule of representation is changed. See Section 220.060 and Comment thereto. Subdivisions (b) and (c) are consistent with former Section 225 except for the new rule of representation. Subdivision (d) supersedes former Section 226 and restricts collateral inheritance to the decedent's grandparents and issue of grandparents, the same as Section 2-103 of the Uniform Probate Code. Under former Section 226, inheritance by blood relatives of the decedent was unlimited, no matter how remote the heir may have been.

If there are no takers under Section 220.020 or 220.030, the decedent's estate escheats to the state. See Section 220.050. However, after the estate has escheated, certain relatives of a predeceased spouse may be able to claim the escheated property. See Section 261.010.

#### § 220.040. Requirement that heir survive decedent by 120 hours

Comment. Section 220.040 is the same in substance as Section 2-104 of the Uniform Probate Code except that Section 220.040 omits the references found in the Uniform Probate Code section to homestead allowance and exempt property. The requirement that the person survive the decedent by 120 hours is new to California law. For a provision governing disposition of community property and quasi-community property where a married person does not survive his or her spouse by 120 hours, see Section 110.040. See also Sections 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

12804

#### § 220.050. Escheat if no taker

Comment. Section 220.050 is comparable to Section 2-105 of the Uniform Probate Code. For provisions relating to escheat, see Sections 260.010-261.010. See also Code Civ. Proc. §§ 1300-1615 (unclaimed property).

#### § 220.060. Representation

Comment. Section 220.060 is the same in substance as Section 2-106 of the Uniform Probate Code. Section 220.060 changes the former California rule under which distribution was per stirpes unless all surviving descendants were of the same degree of kindred to the decedent. See former Sections 221, 222. Under Section 220.060, the primary division of the estate takes place at the first generation having any living members. This changes the rule of *Maud v. Catherwood*, 67 Cal. App.2d 636, 155 P.2d 111 (1945). As to the effect of a disclaimer, see Section 298.280(b).

#### § 220.070. Inheritance by relatives of half blood

Comment. Section 220.070 is the same as Section 2-107 of the Uniform Probate Code and supersedes former Section 254. Under former Section 254, half-blood relatives of the decedent who were not of the

blood of an ancestor of the decedent were excluded from inheriting property of the decedent which had come to the decedent from such ancestor. Section 220.070 eliminates this rule and puts half bloods on the same footing as whole blood relatives of the decedent. See also Section 204.080 (construction of wills).

#### § 220.080. Inheritance by afterborn heirs

Comment. Section 220.080 is the same in substance as Section 2-108 of the Uniform Probate Code and supersedes the second sentence of former Section 250. Section 220.080 is consistent with Civil Code Section 29. See also Section 204.090(b) (person conceived before but born after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes if answering to the description of the class).

12818

#### § 220.090. Parent-child relationship

Comment. Section 220.090 is the same in substance as Section 2-109 of the Uniform Probate Code and supersedes former Sections 255 and 257. Paragraph (3) of subdivision (a) changes the rule of former Section 257 so that in the case of a stepparent adoption, the adopted child may inherit from or through the adoptive parent and also from or through the natural parent who gave up the child for adoption.

Subdivision (b) continues the substance of subdivision (d) of former Section 255. The second sentence of subdivision (b) makes clear that the parent and child relationship may be established in such other proceedings as a child support action.

A person who is only a stepchild, foster child, grandchild, or more remote descendant is not a "child." See Section 100.040. A person who is only a stepparent, foster parent, or grandparent is not a "parent." See Section 100.300. See also Section 204.080 (construction of wills).

The definitions of "child," "issue," and "parent" adopt the rules set out in Section 220.090. See Sections 100.040, 100.230, 100.300.

#### § 220.100. Advancements

Comment. Subdivisions (a), (b), and (d) of Section 220.100 are the same in substance as Section 2-110 of the Uniform Probate Code and supersede the last portion of former Section 1050. Subdivision (c) supersedes a portion of former Section 1052. For a comparable rule concerning ademption by satisfaction, see Section 204.440.

Section 220.100 is consistent with former law with two exceptions:

(1) Under former Section 1053, if the donee of an advancement predeceased the donor, the advancement was deducted from the shares the heirs of the donee would receive from the donor's estate, while under Section 220.100 the advancement is not charged against the donee's issue unless the declaration or acknowledgment provides otherwise.

(2) The provisions relating to the valuation of the property, which supersede former Section 1052, are consistent with the provisions of Section 204.440 relating to ademption by satisfaction. See the Comment to that section.

The rule stated in subdivision (a) applies notwithstanding a disclaimer. See Section 298.280(b).

§ 220.110. Debt owed to decedent

Comment. Section 220.110 is the same in substance as Section 2-111 of the Uniform Probate Code and is consistent with California case law. See Estate of Berk, 196 Cal. App.2d 278, 16 Cal. Rptr. 492 (1961). Subdivision (b) does not apply if the debtor disclaims the intestate share. See Section 298.280(b).

§ 220.120. Inheritance by alien

Comment. Section 220.120 is the same in substance as Section 2-112 of the Uniform Probate Code and is consistent with other provisions of California law. See Cal. Const. Art. 1, § 20; Civil Code § 671.

§ 220.130. Dower and curtesy not recognized

Comment. Section 220.130 continues the substance of former Section 5129 of the Civil Code and is the same in substance as Section 2-113 of the Uniform Probate Code.

§ 220.140. Persons related to decedent through two lines

Comment. Section 220.140 is the same in substance as Section 2-114 of the Uniform Probate Code. Section 220.140 is made necessary by Section 220.090 which creates a possibility that following a stepparent adoption the adopted child could inherit from the same person both as a natural and as an adopted child. See Comment to Uniform Probate Code § 2-114.

## PART 3. FAMILY PROTECTION

CHAPTER 1. TEMPORARY POSSESSION OF FAMILY DWELLING  
AND EXEMPT PROPERTY§ 250.010. Temporary right to remain in possession

Comment. Section 250.010 continues the substance of subdivision (a) of former Section 660. See also Code Civ. Proc. §§ 695.010-695.070, 703.010-704.990, 706.050-706.051 (property exempt from enforcement of money judgment). Other exemptions are listed in the Comment to Code of Civil Procedure Section 703.010.

§ 250.020. Interested person may file petition; notice of hearing

Comment. Section 250.020 is new and is drawn from former Section 662 (probate homestead). See also Section 100.220 ("interested person" defined).

CHAPTER 2. SETTING ASIDE EXEMPT PROPERTY  
OTHER THAN FAMILY DWELLING

§ 250.110. Setting aside exempt property

Comment. Section 250.110 continues the substance of a portion of subdivision (b) of former Section 660, except that Section 250.110 permits the court to award the exempt property to the decedent's minor children even where there is a surviving spouse, while the former section permitted an award to the minor children only in case of the death of the surviving spouse. This change in the former law adopts the rule as to a probate homestead under former Section 661, the substance of which is continued in Section 251.020. Section 250.110 permits, for example, the minor children to receive the furniture and household furnishings for a probate homestead set apart for the use of the minor children. See the Comment to Section 251.020. See also the Comment to Section 250.010 for a listing of provisions relating to property exempt from enforcement of a money judgment.

§ 250.120. Interested person may file petition; notice of hearing

Comment. Section 250.120 is new and is drawn from former Section 662 (probate homestead). See also Section 100.220 ("interested person" defined).

13605

CHAPTER 3. SETTING ASIDE PROBATE HOMESTEAD

§ 251.010. Court may select and set apart probate homestead

Comment. Section 251.010 continues the substance of a portion of subdivision (b) of former Section 660. Under Section 251.010, establishment of a probate homestead is discretionary with the court. The factors to be used by the court in exercising discretion are set forth in Section 251.040.

§ 251.020. Persons for whom probate homestead is to be set apart

Comment. Section 251.020 continues subdivision (a) of former Section 661. Section 251.020 permits the probate homestead to be set apart for minor children of the decedent even if there is a surviving spouse. This may be desirable, for example, if the minor children live apart from the surviving spouse or where the minor children are not children of the surviving spouse.

§ 251.030. Property from which probate homestead is to be selected

Comment. Section 251.030 continues subdivisions (b) and (c) of former Section 661. Section 251.030 does not require that the probate homestead be selected out of real property. The probate homestead may be selected out of personal property such as a mobilehome. Under Section 251.030, the court may select a homestead out of separate property of the decedent despite the availability of community or quasi-community property or property held in common by the decedent and the person in whose use the homestead is set apart. However, the court must give preference to property other than the separate property of the decedent for selection as a probate homestead.

Subdivision (b) limits the property from which the homestead may be selected. A probate homestead may not be created on property of which a third person has the right to possession, whether by partial ownership, lease, or otherwise, without the person's consent. The probate homestead can affect the possessory rights only of testate and intestate successors of the decedent. See also Sections 100.060 ("community property" defined), 100.380 ("quasi-community property" defined).

14916

§ 251.040. Factors to be considered in setting apart probate homestead

Comment. Section 251.040 continues former Section 664. Under Section 251.040, the court has broad discretion in selecting the probate homestead and may take into account a wide variety of factors in exercising its discretion. Section 251.040 expressly authorizes the court to condition the homestead on any terms that appear proper to the court. The court may select the homestead out of the separate property of the decedent but must give a preference to community or quasi-community property of or other property held in common by the decedent and the person for whose use the homestead is set apart. See Section 251.030 and Comment thereto. The court must select the most appropriate property as the homestead and is not limited to the existing dwelling. The court is not limited to existing lots or parcels, but must set apart only so much of the property as is reasonable under the circumstances of the case.

§ 251.050. Duration of probate homestead; rights of parties

Comment. Section 251.050 continues subdivision (d) of former Section 661. Section 251.050 requires that the probate 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. Under Section 251.050, the property remains subject to administration so that upon termination of the probate homestead right title to the property of the decedent set apart as a probate homestead vests in the heirs or devisees. Any portion of the probate 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 probate homestead right. The rights of the homestead recipients and remaindermen are governed by the Legal Estates Principal and Income Law, but the court setting apart the homestead may vary the requirements of the law where appropriate to do so. See Civil Code § 731.04. As to the rights of creditors during and after administration, see Section 251.070.

§ 251.060. Petition and notice

Comment. Section 251.060 continues the substance of former Section 662. See also Section 100.220 ("interested person" defined).

14917

§ 251.070. Liability of property set apart as probate homestead for claims

Comment. Section 251.070 continues former Section 663. Subdivision (a) of Section 251.070 sets the rules governing liability of probate

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 probate homestead right of occupancy by the person for whose use the homestead is set apart. This codifies the rule of In re Estate of Tittel, 139 Cal. 149, 72 P. 909 (1903). The second sentence recognizes the common law rule that the probate homestead does not affect prior liens and encumbrances. See, e.g., In re Estate of McCauley, 50 Cal. 544 (1875); In re Estate of Huelsman, 127 Cal. 275, 59 P. 776 (1899). However, the court may select as a probate homestead property not subject to liens and encumbrances or property whose liens and encumbrances will be discharged in probate. See Section 251.040 (discretion of court). Preexisting liens and encumbrances on the property may be satisfied out of the probate homestead right. If the property would have been exempt from enforcement of a claim secured by a lien or encumbrance at the time of the decedent's death, however, the homestead recipient may claim a homestead exemption for the probate homestead right.

Subdivision (b) states the rule governing liability of the probate homestead right for debts of the person for whose use the homestead is set apart. Subdivision (b) creates an absolute exemption for the probate homestead right, both as to prior and subsequently incurred debts, regardless of liens created on the probate homestead right. Subdivision (b) does not preclude a creditor of the person for whose use the probate homestead is set apart from reaching any interest in the property the person may have apart from the probate homestead right; this may occur where the homestead was selected out of community property or property held in common by the decedent and the person for whose use the homestead is set apart. In such a situation, the exemption from execution for a dwelling may be available to the person for whose use the homestead is set apart to protect his or her property interest.

Subdivision (c) states the rule governing liability of probate homestead property for debts of the heirs or devisees or other persons who may have acquired the property through administration. The probate homestead property is subject to administration and devolves as any other property, subject to the right of use of the homestead by the persons for whose use it is set apart. See Section 251.050. Under subdivision (c) of Section 251.070, the remainder interest but not the probate homestead right is subject to claims of creditors.

15325

§ 251.080. Modification or termination of probate homestead right

Comment. Section 251.080 continues the substance of former Section 665 with the addition of subdivision (c). Section 251.080 gives the court authority to modify the probate homestead right until the entry of the final decree of distribution in recognition of the possibility of changed circumstances.

CHAPTER 4. FAMILY ALLOWANCE

§ 252.010. Persons for whom family allowance may be made

Comment. Subdivisions (a) and (b) of Section 252.010 continue the substance of subdivisions (a) and (b) of former Section 680. Subdivision (c) continues the substance of former Section 682. The right of a

surviving spouse to a family allowance may be waived in whole or in part, whether the waiver is executed before or during marriage. See Sections 111.010-111.080. As to the priority of the family allowance, see Section 950. See also Sections 750 (order of resort to estate assets), 754 (no priority as between sale of personal and real property).

§ 252.020. Petition and notice

Comment. Section 252.020 continues the substance of a portion of former Section 681. See also Section 100.220 ("interested person" defined).

§ 252.030. Time of commencement of allowance

Comment. Section 252.030 codifies existing practice. See Pigott, Family Allowance, in 1 California Decedent Estate Administration §§ 11.12, 11.15, 11.18-11.19, at 400, 404, 406 (Cal. Cont. Ed. Bar 1971). The prohibition against an order which is retroactive to a date earlier than the date of decedent's death continues the substance of a portion of subdivision (c) of former Section 680.

15326

§ 252.040. Termination of allowance

Comment. Subdivision (a) of Section 252.040 continues portions of former Section 680. Subdivision (b) continues a portion of the first sentence of subdivision (a) of former Section 681. The authority in subdivision (b) for the court to make an order terminating a family allowance or to include a termination date in its original order is new, but was implied under the former sections. See Pigott, Family Allowance, in 1 California Decedent Estate Administration §§ 11.15, 11.28, at 404, 410 (Cal. Cont. Ed. Bar 1971).

§ 252.050. [Reserved]

§ 252.060. Costs paid as expenses of administration

Comment. Section 252.060 continues the substance of former Section 683.

§ 252.070. No stay on appeal if undertaking furnished

Comment. Section 252.070 continues the substance of a portion of former Section 684. Concerning enforcement of liability on the undertaking, see Code Civ. Proc. §§ 996.410-996.495.

## CHAPTER 5. FAMILY MAINTENANCE

§ 253.010. "Eligible person" defined

Comment. Chapter 5 permits a family maintenance order to be made out of the decedent's estate for the support of the persons specified in Section 253.010. These persons are the same persons as those to whom a family allowance may be made under Section 252.010, but the standard for an award of family maintenance is more limiting than the standard that governs the award of a family allowance. See Section 253.040 and the Comment to that section. Unlike the provisions for a family allowance (Sections 252.010-252.070) which provide temporary support while the estate is being administered (see Section 252.040), the family maintenance provisions of this chapter permit a long-term award of support. Although former law made provision for a family allowance, no provision was made for family maintenance. Whether a court will order support under this chapter depends upon the circumstances of the particular case. See Section 253.040. The right of a surviving spouse to family maintenance may be waived in whole or in part, whether the waiver is executed before or during marriage. See Sections 111.010-111.080.

This chapter does not deal with the right of a former spouse of the decedent to obtain support from the estate when a property settlement agreement between the spouses so provides. This continues to be governed by the Family Law Act. See Civil Code § 4801(b); 6 B. Witkin, Summary of California Law Husband and Wife § 204, at 5075 (8th ed. 1974).

§ 253.020. Petition and notice

Comment. Section 253.020 is new. See also Sections 100.140 ("family maintenance" defined), 100.220 ("interested person" defined), 253.010 ("eligible person" defined).

§ 253.030. No maintenance for child where whole estate goes to child's other parent

Comment. Section 253.030 recognizes that when substantially all of the estate goes to the surviving parent of the decedent's child, the surviving parent will ordinarily make adequate provision for the child, and that the surviving parent's obligation to support the child may be enforced by judicial proceedings if necessary.

§ 253.040. Circumstances to be considered by court

Comment. Section 253.040 sets forth the matters the court must consider in determining whether to order family maintenance and in determining the amount of the award. See also Section 253.010 ("eligible person" defined). Although the persons to whom an award of family allowance and an award of family maintenance may be made are the same (see Sections 252.010 and 253.010), the award of family maintenance is limited by the factors required to be considered under Section 253.040. Compare Section 252.010 (family allowance).

§ 253.050. Terms of order

Comment. Section 253.050 gives the court broad discretion to fashion an appropriate order so long as the terms of the order do not require an undue delay in closing the decedent's estate. Family maintenance is paid after most other expenses, debts, and charges against the estate. See Section 950. See also Section 253.010 ("eligible person" defined). The listing in subdivision (b) of Section 253.050 is not exclusive. For example, the decedent's estate may include an asset that produces a regular income that would be sufficient to support a child during minority. If appropriate under the circumstances of the particular case, the court might have this asset set aside during the child's minority with the income to be paid to the child's guardian. When the child reaches 18, the asset would go to the decedent's heirs or devisees who are otherwise entitled to the asset. See also Sections 750 (order of resort to estate assets), 753 (no priority as between sale of personal and real property).

§ 253.060. Modification of order

Comment. Section 253.060 permits the court to modify an order made under this chapter. See also Section 100.220 ("interested person" defined).

§ 253.070. No stay on appeal if undertaking furnished

Comment. Section 253.070 is the same as Section 252.070. Concerning enforcement of liability on the undertaking, see Code Civ. Proc. §§ 996.410-996.495.

16875

CHAPTER 6. SPOUSE AND CHILDREN UNPROVIDED  
FOR IN WILL

Article 1. Omitted Spouse§ 254.010. Share of omitted spouse

Comment. Section 254.010 supersedes the portion of former Section 70 which had the effect of giving an omitted spouse the same share as the omitted spouse would have taken if the testator had died intestate. Section 254.010 does not adopt the intestate share for a surviving spouse as the omitted spouse's share. Instead, Section 254.010 specifies the share of the omitted spouse. The omitted spouse is not entitled to this share if the spouse was intentionally omitted from the will or has been otherwise provided for. See Section 254.020.

As in the case of intestate succession, the omitted spouse takes all of the community and quasi-community property that is included in the testator's estate. In addition, the omitted spouse takes all the separate property in the testator's estate unless the testator dies leaving one or more close relatives (issue, parent, brother, sister, or issue of a brother or sister). Where the testator dies without leaving any such close relatives, the omitted spouse takes in preference to other devisees under the will. Where the testator dies leaving one or

more of such close relatives, the omitted spouse takes all of the separate property which does not pass to the close relatives and, in any case, at least one-half of the separate property. Section 254.010 continues former law insofar as it gives the omitted spouse all of the separate property where the testator does not leave one or more of the close relatives described in the statute. See former Prob. Code § 224. Where the testator dies leaving one or more of the close relatives, former law was less favorable to the omitted spouse: The share of the omitted spouse was one-third or one-half of the separate property, depending on who the close relatives were. See former Prob. Code §§ 221, 223. Under Section 254.010, the omitted spouse always takes at least one-half of the separate property. And the omitted spouse takes all of the separate property not passing to one of the close relatives described in the statute. This scheme gives a preference to an omitted spouse over devisees in the will that are not close relatives. At the same time, it gives some recognition to the dispositions made in the will to close relatives by giving effect to such dispositions so long as they do not in the aggregate exceed one-half of the separate property in the estate. As to the manner of satisfying the share of the omitted spouse, see Section 254.030. See also Section 100.470 ("surviving spouse" defined).

16881

§ 254.020. No share if spouse intentionally omitted or otherwise provided for

Comment. Section 254.020 supersedes a portion of former Section 70 and is drawn in part from Section 2-301 of the Uniform Probate Code.

Subdivision (a) continues the substance of a portion of former Section 70. Subdivision (a) is consistent with the comparable provision of Section 2-301 of the Uniform Probate Code.

Unlike former Section 70, subdivision (b) provides that the spouse does not receive a share if the testator provided for the spouse by a "transfer outside the will" that was intended to be in lieu of a testamentary provision; former Section 70 recognized only the case where "provision has been made for the spouse by marriage contract." Subdivision (b) is the same in substance as a provision of Section 2-301 of the Uniform Probate Code.

Subdivision (c) recognizes that a spouse may waive the right to take property of the other spouse by testate or intestate succession. See Sections 111.010-111.080.

§ 254.030. Manner of satisfying share of omitted spouse

Comment. Section 254.030 provides that the general California abatement rules apply for the purpose of satisfying the share of the omitted spouse.

Article 2. Pretermitted Children

§ 254.110. Share of pretermitted child

Comment. Sections 254.110-254.130 supersede former Section 90. Section 254.110 limits the children that are considered to be pretermitted children in two significant ways:

(1) Unlike former Section 90, an omitted child living when the will was made does not receive a share of the estate under Section 254.110 unless the child is one described in Section 254.130 (child omitted solely because the testator mistakenly believed the child to be dead or was unaware of the birth of the child). When the omission is not based on such mistaken belief, it is more likely than not that the omission was intentional. See Evans, Should Pretermitted Issue Be Entitled to Inherit?, 31 Calif. L. Rev. 263, 269 (1943); Niles, Probate Reform in California, 31 Hastings L.J. 185, 197 (1979).

(2) Unlike former Section 90, Section 254.110 does not protect omitted grandchildren or more remote issue of a deceased child of the testator. If the testator's child is deceased at the time the will is made and the testator omits to provide for a child of that child (the testator's grandchild), the omission would seem to be intentional in the usual case. If the testator's child is living when the will is made and is a named beneficiary under the will and dies before the testator leaving a child surviving, the testator's grandchild will be protected by the anti-lapse statute (Section 204.050) which substitutes the deceased child's issue.

Former Section 90 gave an omitted child an intestate share in the deceased testator's estate. This rule is continued in subdivision (b) of Section 254.110, but subdivision (b) applies only in the case where the testator did not have any children when the will was executed. If the testator had one or more children when the will was executed, subdivision (a) of Section 254.110 gives the omitted child a share equal in value to the average of the shares received by the testator's other children, rather than giving the child an intestate share. This should result in treating all the children fairly, both those in existence when the will was executed and those born after its execution. Giving a child born after the will was executed an intestate share rather than a share equal to the average of that given the other children by the will would almost surely result in the omitted child receiving substantially more or less than the other children. Subdivision (a) is drawn from Sections 21-7-450 and 21-7-460 of the Code of Laws of South Carolina (1976).

Where the testator did not have any children when the will was executed, the afterborn child is entitled to a share equal in value to that which the child would have received if the testator had died intestate. Where the testator leaves a surviving spouse, the child may receive little or nothing. Under Section 220.020, as under former law, the surviving spouse takes all of the community and quasi-community property by intestate succession. And, under the same section, the surviving spouse takes all of the separate property unless there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse. Hence, the omitted child will receive a share only in those situations where the decedent leaves no surviving spouse or leaves a surviving spouse and issue who are not issue of the surviving spouse. As to the intestate share of the omitted child, see Sections 220.020 and 220.030.

Although the omitted child may receive nothing under this article, the child may be eligible for family allowance (Sections 252.010-252.070) and family maintenance (Sections 253.010-253.070) if in need of support after the testator's death. See also Section 100.040 ("child" defined).

17016

§ 254.120. No share if child intentionally omitted or otherwise provided for

Comment. Section 254.120 supersedes a portion of former Section 90. Unlike the former section, subdivision (a) of Section 254.120 does not require that it appear "from the will" that the omission was intentional. This expands former law, which permitted surrounding circumstances to be considered only to show that the omission was unintentional. See Estate of Smith, 9 Cal.3d 74, 79-80, 507 P.2d 78, 106 Cal. Rptr. 774 (1973) (extrinsic evidence inadmissible to prove intent to disinherit).

Subdivision (b) substitutes more precise and complete language from Section 2-302 of the Uniform Probate Code for the phrase that the children "are unprovided for by any settlement, and have not had an equal proportion of the testator's property bestowed on them by way of advancement" which appeared in former Section 90.

§ 254.130. Certain children treated as children born after execution of will

Comment. Section 254.130 is drawn from subsection (b) of Section 2-302 of the Uniform Probate Code, but Section 254.130 expands the UPC provision to include the case where the testator is unaware of the birth of the child. Former Section 90 protected any omitted child in existence when the will was made, not just those children described in Section 254.130. See the Comment to Section 254.110.

§ 254.140. Manner of satisfying share of pretermitted child

Comment. Section 254.140 continues the substance of former Section 91. Under this article, the share of a pretermitted child is satisfied out of the testator's probate estate. See also Sections 100.090 ("devise" means testamentary disposition of real or personal property), 100.100 ("devisee" means a person designated in a will to receive a devise).

17020

PART 4. ESCHEAT OF DECEDENT'S PROPERTY

CHAPTER 1. GENERAL PROVISIONS

§ 260.010. Escheat of decedent's property

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

§ 260.020. Real property

Comment. Section 260.020 continues former Section 232.

§ 260.030. Tangible personal property customarily kept in this state

Comment. Section 260.030 continues former Section 233.

§ 260.040. Tangible personal property subject to control of superior court in this state

Comment. Section 260.040 continues former Section 234.

§ 260.050. Intangible personal property of decedent domiciled in state

Comment. Section 260.050 continues former Section 235.

17021

§ 260.060. Intangible personal property subject to control of superior court in this state

Comment. Section 260.060 continues former Section 236.

§ 260.070. Benefits distributable from certain trusts

Comment. Section 260.070 continues subdivision (c) of former Section 231.

CHAPTER 2. RIGHT TO ESCHEATED PROPERTY

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

Comment. Section 261.010 supersedes former Section 229 which gave inheritance rights to persons who were not relatives of the decedent. The inheritance rights of such persons are not continued, but Section 261.010 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.

Operative date

CONFORMING AMENDMENTS, ADDITIONS, AND REPEALS

SEC. \_\_\_\_ . Section 226.12 is added to the Civil Code, to read:

226.12. In the case of a stepparent adoption, the form prescribed by the State Department of Social Services for the consent of the natural parent shall contain substantially the following notice: "Notice to the natural parent who relinquishes the child for adoption: Adoption of your child by a stepparent does not affect the child's right to inherit your property or the property of other blood relatives."

35091

SEC. \_\_\_\_ . Section 1389.4 of the Civil Code is amended to read:

1389.4. (a) Except as provided in subdivision (b), if an appointment by will or by instrument effective only at the death of the donee is ineffective because of the death of an appointee before the appointment becomes effective and the appointee leaves issue surviving the donee, the ~~surviving~~ issue of such appointee who survive the donee by 120 hours shall take the appointed property ~~;~~ per stirpes and not per capita; in the same manner as the appointee would have taken had the appointee survived the donee except that the property shall pass only to persons ~~who~~ are permissible appointees, including those permitted under Section 1389.5. If the surviving issue are all of the same degree of kinship to the deceased appointee they take equally, but if of unequal degree then those of more remote degree take by representation as provided in Section 220.060 of the Probate Code.

(b) This section does not apply if either the donor or donee manifests an intent that some other disposition of the appointive property shall be made.

SEC. \_\_\_\_ . Section 1624 of the Civil Code is amended to read:

1624. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794;

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

5. An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where such lease is for a longer period than one year, for compensation or a commission;

6. An agreement which by its terms is not to be performed during the lifetime of the promisor ~~; or an agreement to devise or bequeath any property; or to make any provision for any person by will~~ ;

7. An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of said indebtedness by the purchaser is specifically provided for in the conveyance of such property.

36274

SEC. \_\_\_\_ . Section 4352 of the Civil Code is amended to read:

4352. Every interlocutory and every final judgment declaring a marriage a nullity or dissolving a marriage shall contain the following notice:

Notice: Please review your will. ~~Unless a provision is made in the property settlement agreement, this court proceeding does not affect your will and the ability of your former spouse to take under it.~~ A final judgment of dissolution or annulment of marriage revokes any disposition made by your will to your former spouse. You should also review your insurance policies, retirement benefit plans, and other matters that you may want to change in view of the dissolution or annulment of your marriage.

SEC. \_\_\_\_ . Section 5129 of the Civil Code is repealed.

~~5129. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.~~

07447

SEC. \_\_\_\_ . Section 1443 of the Code of Civil Procedure is amended to read:

1443. Notwithstanding any other provision of law, all money or other property paid or delivered to the State or any officer or employee thereof under the provisions of Sections ~~234~~ 260.010 , 738, 1027, 1144, or 1148 of the Probate Code, or under any other section of ~~said code~~ the Probate Code , or any amendment thereof adopted after the effective date of this section, shall be deemed to be paid or delivered for deposit in the State Treasury under the provisions of this article, and shall be transmitted, received, accounted for, and disposed of, as provided in this title.

36616

SEC. \_\_\_\_ . Section 24606 of the Education Code is amended to read:

24606. ~~Where the member or retirant and the beneficiary have died and there is no sufficient evidence that they have died otherwise than simultaneously~~ The provisions of Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code, when applicable, govern the distribution of the proceeds of any death benefit ~~shall be distributed as if the member had survived the beneficiary, payable under this system. In applying Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code with respect to proceeds payable to a beneficiary, membership in the system shall be considered as having the same status as an insurance policy issued after December 31, 1984.~~

SEC. \_\_\_\_ . Section 21371 of the Government Code is amended to read:

21371. The provisions of ~~the Uniform Simultaneous Death Act~~ Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of

the Probate Code, when applicable, shall govern the distribution of money payable under this system, including but not limited to retirement allowance accrued but not received prior to death and refund of member contributions. In applying ~~said act~~ Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code with respect to benefits payable to a beneficiary, membership in the system shall be considered as ~~in~~ having the same status as an insurance ~~policy~~ policy issued after December 31, 1984.

08150

SEC. \_\_\_\_ . Section 298.280 of the Probate Code is amended to read:  
298.280. (a) Unless the creator of the interest provides for a specific disposition of the interest in the event of a disclaimer, the interest disclaimed shall descend, go, be distributed, or continue to be held (1) as to a present interest, as if the disclaimant had predeceased the creator of the interest or (2) as to a future interest, as if the disclaimant had died before the event determining that the taker of the interest had become finally ascertained and the taker's interest indefeasibly vested. A disclaimer relates back for all purposes to the date of the death of the creator of the disclaimed interest or the determinative event, as the case may be.

(b) Notwithstanding subdivision (a):

(1) If an interest created by intestate succession is disclaimed, the beneficiary is not treated as having predeceased the decedent for the purpose of determining the generation at which the division of the estate is to be made under Section 220.060.

(2) The beneficiary of a disclaimed interest is not treated as having predeceased the decedent for the purpose of applying subdivision (d) of Section 220.100 or subdivision (b) of Section 220.110.

5096

SEC. \_\_\_\_ . Section 300 of the Probate Code is amended to read:  
300. When a person dies, the title to ~~his~~ the person's property, real and personal, passes to the person to whom it is devised or bequeathed by ~~his~~ the decedent's last will, or, in the absence of such disposition, to the persons who succeed to ~~his~~ the decedent's estate as provided in

Division 2 of this code (commencing with Section 200.010) ; but all of ~~his~~ the decedent's property ~~shall be~~ is subject to the possession of the executor or administrator and to the control of the superior court for the purposes of administration, sale , or other disposition under the provisions of ~~Division 3 of this code~~ this division , and ~~shall be~~ is chargeable with the expenses of administering ~~his~~ the decedent's estate, and the payment of ~~his~~ the decedent's debts ~~and~~ , the family allowance, to the family and family maintenance, except as otherwise provided in this code.

SEC. \_\_\_\_ . Section 323 of the Probate Code is amended to read:

323. Any executor, devisee or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will proved, ~~whether the same be in writing or nuncupative or not the will~~ be in his the petitioner's possession or not , lost or destroyed, or beyond the jurisdiction of the state.

SEC. \_\_\_\_ . Section 328.3 is added to the Probate Code, to read:

328.3. A will or part of a will procured to be made by duress, menace, fraud, or undue influence may be denied probate. A revocation procured by the same means may be declared void.

SEC. \_\_\_\_ . Section 328.7 is added to the Probate Code, to read:

328.7. A will, the validity of which is made conditional by its own terms, shall be granted or denied probate, or denied effect after probate, in conformity with the condition.

5097/NZ

SEC. \_\_\_\_ . Section 350 of the Probate Code is repealed.

~~350. No will shall be proven as a lost or destroyed will unless proved to have been in existence at the time of the death of the testa-~~

tor, or shown to have been destroyed by public calamity, or destroyed fraudulently in the lifetime of the testator, without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses.

08151

SEC. \_\_\_\_ . Section 351 of the Probate Code is amended to read:

351. The petition for the probate of a lost or destroyed will ~~must~~ shall state, or be accompanied by a written statement of, the testamentary words, or the substance thereof. If the will is established, the provisions ~~thereof must~~ of the will shall be set forth in the order admitting the will to probate, and the order ~~must~~ shall be entered at length in the minutes. The testimony of each witness ~~must~~ whose testimony is offered to prove the provisions of the will shall be reduced to writing, signed by ~~him~~ the witness and filed, and shall be admissible in evidence in any contest of the will if the witness has died or has permanently removed from the state.

SEC. \_\_\_\_ . Section 351.5 is added to the Probate Code, to read:

351.5. If after the testator's death the testator's will cannot be found, there is no presumption that the testator destroyed the will with intent to revoke it.

5098

SEC. \_\_\_\_ . Section 422 of the Probate Code is amended to read:

422. (a) Administration of the estate of a person dying intestate must be granted to one or more of the following persons, who are entitled to letters in the following order:

- (1) The surviving spouse, or some competent person whom he or she may request to have appointed.
- (2) The children.
- (3) The grandchildren.
- (4) The parents.
- (5) The brothers and sisters.
- (6) The next of kin entitled to share in the estate.

~~(7)~~ The relatives of a previously deceased spouse, when such relatives are entitled to succeed to some portion of the estate,

~~(8)~~ (7) The public administrator.

~~(9)~~ (8) The creditors.

~~(10)~~ (9) Any person legally competent.

(b) A relative of the decedent who is entitled to priority under subdivision (a) is entitled to priority only if either of the following facts exist:

(1) The relative is entitled to succeed to all or part of the estate.

(2) The relative is a parent, grandparent, child, or grandchild of the decedent and either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

SEC. \_\_\_\_ . Section 632 of the Probate Code is amended to read:

632. For the purpose of this article, any property or interest therein or lien thereon which, at the time of the decedent's death, was held by the decedent as joint tenant, or in which the decedent had a life or other estate terminable upon the decedent's death, or which was by the decedent as community property or quasi-community property and passed to the decedent's surviving spouse pursuant to Section ~~262~~ 649.1 , shall be excluded in determining the property or estate of the decedent or its value.

SEC. \_\_\_\_ . Section 640 of the Probate Code is amended to read:

640. If the decedent leaves a surviving spouse or minor child or minor children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and over and above the value of any probate homestead interest set apart out of decedent's estate under Section ~~660 or Section 661 of this code~~ 251.010 , does not exceed the sum of twenty thousand dollars (\$20,000), the same may be set aside to the surviving spouse, if there be one, and if there be none, then to the minor child or minor children of the decedent.

SEC. \_\_\_\_ . Section 641 of the Probate Code is amended to read:

641. Allegations showing that this article is applicable, together with a prayer that the estate be set aside as provided in this article, may be presented without filing a petition for probate of the will or for letters of administration, by petition of the person named in the will as executor or the surviving spouse or the guardian of the minor child or children of the decedent. Such allegations and prayer may also be included alternatively in the petition for probate of the will or for letters of administration or such allegations and prayer may be presented by separate petition filed by the person representative of the decedent, or the surviving spouse, or the guardian of the minor child or children, filed at any time before the hearing on the petition for probate of the will or for letters of administration or after the filing of the inventory. In all cases the petition shall be verified. The allegations shall include a specific description and an estimate of the value of all of the decedent's property, a list of all liens and encumbrances at the date of death, and a designation of any property as to which a probate homestead is set apart out of decedent's estate under Section ~~660~~ ~~or 661~~ 251.010 .

SEC. \_\_\_\_ . Section 645 of the Probate Code is amended to read:

645. If, upon the hearing of any petition provided for by this article, the court finds that the net value of the estate over and above all liens and encumbrances at the date of death of the decedent and over and above the value of any probate homestead interest set apart out of decedent's estate under Section ~~660~~ ~~or Section 661 of this code~~ 251.010 , does not exceed the sum of twenty thousand dollars (\$20,000), as of the date of such death, and that the expenses of the last illness, funeral charges and expenses of administration have been paid, it shall, by decree for that purpose, assign to the surviving spouse of the decedent, if there be a surviving spouse ~~;~~ ~~provided said surviving spouse shall~~ who has not have theretofore remarried, or, if there be no such surviving spouse, then to such child or children of the decedent as may then be minors, if any, the whole of the estate, subject to whatever mortgages, liens or encumbrances there may be upon ~~said~~ the estate at the time of the death of the decedent. The title thereto shall vest absolutely in

such surviving spouse, or if there be no such surviving spouse, the minor child or children subject to whatever mortgages, liens or encumbrances there may be upon ~~said~~ the estate at the time of the death of the decedent, and there must be no further proceedings in the administration, unless further estate be discovered.

30926

SEC. \_\_\_\_ . Section 645.3 of the Probate Code is amended to read:

645.3. A surviving spouse or a minor child or children in whom title has vested pursuant to Section 645 shall be personally liable for the unsecured debts of the decedent. The personal liability shall not exceed the value of the estate at the date of death, less the amount of any liens and encumbrances and any probate homestead and other property set apart pursuant to Section ~~660 or Section 661~~ 250.110 or 251.010 . Such personal liability shall cease one year after title to the estate vests, except with respect to any actions or proceedings then pending in court. In any action based upon such an unsecured debt, the surviving spouse, or the minor child or children, or the guardian of such minor child or children, may assert any defenses, ~~counterclaims~~ cross-complaints , or setoffs which would have been available to the decedent if the decedent had not died.

30927

SEC. \_\_\_\_ . Article 2.5 (commencing with Section 649.1) is added to Chapter 10 of Division 3 of the Probate Code, to read:

Article 2.5. Administration of Community and  
Quasi-Community Property

649.1. (a) Except as provided in Section 649.3, when a husband or wife dies intestate, or dies testate and by his or her will bequeaths or devises all or a part of his or her interest in the community property or quasi-community property to the surviving spouse, it passes to the survivor subject to the provisions of Sections 649.2 and 649.4, and no administration is necessary.

(b) Notwithstanding subdivision (a), upon the election of the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse, the interest of

the deceased spouse in the community property or quasi-community property or both the interest of the deceased spouse and the surviving spouse in the community property or quasi-community property, or both, may be administered under this division. The election must be made within four months after the issuance of letters testamentary or of administration, or within such further time as the court may allow upon a showing of good cause, by a writing specifically evidencing the election filed in the proceedings for the administration of the estate of the deceased spouse and prior to the entry of an order under Section 655.

(c) Notwithstanding subdivision (a) or (b), the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file an election and agreement in the proceedings for the administration of the estate of the deceased spouse to have all or part of the interest of the surviving spouse in the community property or quasi-community property transferred by the surviving spouse or the surviving spouse's personal representative, guardian, or conservator to the trustee under the will of the deceased spouse or the trustee of an existing trust identified by the will of the deceased spouse, to be administered and distributed by the trustee. The election and agreement must be filed before the entry of the decree of final distribution in the proceedings.

30928

649.2. After 40 days from the death of a spouse, the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse shall have full power to sell, lease, mortgage or otherwise deal with and dispose of the community or quasi-community real property, unless a notice is recorded in the county in which the property is situated to the effect that an interest in the property is claimed by another under the will of the deceased spouse. The notice must also (1) describe the property in which an interest is claimed, and (2) set forth the name or names of the owner or owners of the record title to the property. There shall be endorsed on the notice instructions that it shall be indexed by the recorder in the name or names of the owner or owners of the record title to the property, as grantor or grantors, and in the name of the person claiming an interest in the property, as grantee. The right, title, and

interest of any grantee, purchaser, encumbrancer, or lessee shall be as free of rights of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse.

649.3 When a deceased spouse disposes by will of all or part of his or her interest in the community property or quasi-community property to someone other than the surviving spouse or when the will of a deceased spouse contains a trust or limits the surviving spouse to a qualified ownership in the property, that part of the interest of the deceased spouse in the community property or quasi-community property disposed of to someone other than the surviving spouse, disposed of in trust, or limiting the surviving spouse to a qualified ownership in the property shall be subject to administration under this division. A will that provides for a devise or bequest of community property or quasi-community property to the surviving spouse if such spouse survives the deceased spouse by a specified period of time shall not be considered to create such a qualified ownership as to fall within the provision of this section, if the specified period of time has expired.

30929

649.4. (a) Except as provided by Section 951.1, upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the community property and the debts of the deceased spouse chargeable against the separate property of the deceased spouse to the extent such separate property is characterized as quasi-community property under Section 100.380, unless the interests of both spouses in the community property or quasi-community property, or both, are administered under this division. The personal liability shall not exceed the value at the date of death, less the amount of any liens and encumbrances, of the total of the following:

(1) The interest of the surviving spouse (A) in the community property immediately prior to the death and (B) in quasi-community property arising by virtue of the death which is not exempt from the enforcement of a money judgment.

(2) The interest of the deceased spouse in such property passing to the surviving spouse without administration.

(b) If proceedings are commenced in this state for the administration of the estate of the deceased spouse and the time for filing or presenting claims has commenced, any action upon the liability of the surviving spouse pursuant to subdivision (a) shall be barred to the same extent as provided for claims under Article 1 (commencing with Section 700) of Chapter 12, except as to the following:

(1) Creditors who had commenced judicial proceedings for the enforcement of the debts and had served the surviving spouse with process prior to the expiration of the time for filing or presenting claims.

(2) Creditors who secure the acknowledgment in writing of the liability of the surviving spouse for the debts.

(3) Creditors who file a timely claim in the proceedings.

(c) Except as provided by subdivision (b), any debt described in subdivision (a) may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died. In any action based upon the debt, the surviving spouse may assert any defenses, cross-complaints, or setoffs which would have been available to the deceased spouse if the deceased spouse had not died.

649.5. Notwithstanding the provisions of this article, community property held in a revocable trust described in Section 5113.5 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

30938

SEC. \_\_\_\_ . Section 650 of the Probate Code is amended to read:

650. (a) A surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file a petition in the superior court in the county in which the estate of the deceased spouse may be administered alleging that administration of all or a part of the estate is not necessary for the reason that all or a part of the estate is community property or quasi-community property passing or belonging to the surviving spouse. The petition shall be verified and shall set forth the following information:

(1) The facts necessary to determine the county in which the estate of the deceased spouse may be administered if proceedings for the administration of the estate are not pending.

(2) The names, ages, and addresses of the heirs, devisees, and legatees of the deceased spouse, the names and addresses of all persons named as executors of the will of the deceased spouse, and the names and addresses of all persons appointed as executors of the will or administrators of the estate of the deceased spouse, which are known to the petitioner.

(3) A description of the property of the deceased spouse which the petitioner alleges is community property or quasi-community property passing to the surviving spouse, including the trade or business name of any community property or quasi-community property business which the deceased spouse was operating or managing at the time of death.

(4) The facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is community property or quasi-community property passing to the surviving spouse.

(5) A description of any interest in the community property or quasi-community property, or both, which the petitioner requests the court to confirm to the surviving spouse as belonging to the surviving spouse pursuant to Section ~~204.5~~ 110.010 or 110.020 .

(b) If the petitioner bases the allegation that all or part of the estate of the deceased spouse is community property or quasi-community property passing to the surviving spouse upon the will of the deceased spouse, a copy of the will shall be attached to the petition.

(c) To the extent of the election, this section ~~shall~~ does not apply if the petitioner has elected pursuant to subdivision (b) of Section 649.1 either to have :

(1) the The interest of the deceased spouse in the community property or quasi-community property, or both , administered under this division.

(2) Both the interest of the deceased spouse and the surviving spouse in the community property or quasi-community property , or both, administered under this division ~~pursuant to subdivision (b) of Section 202~~ .

(d) The action authorized by this section may be taken by a guardian or conservator without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

SEC. \_\_\_\_ . Section 655 of the Probate Code is amended to read:

655. (a) If the court finds that all of the property is community property or quasi-community property, or both, passing to the surviving spouse, it shall issue an order describing the property, determining that the property is community property or quasi-community property, or both, passing to the surviving spouse, and determining that no administration is necessary. If the petition filed under Section 650 includes a description of the interest of the surviving spouse in the community property or quasi-community property, or both, which belongs to the surviving spouse pursuant to Section ~~204~~ 110.010 or ~~204.5~~ 110.020 and the court finds that the interest belongs to the surviving spouse, it shall issue an order describing the property and confirming the ownership of the surviving spouse.

(b) If the court finds that all or a part of the property is not community property or quasi-community property passing to the surviving spouse, it shall do all of the following:

(1) Issue an order describing any property which is community property or quasi-community property passing to the surviving spouse, determining that the property passes to the surviving spouse, and determining that no administration of the property is necessary; and issue any further orders which may be necessary to cause delivery of the property or its proceeds to the surviving spouse.

(2) If the petition filed under Section 650 includes a description of the interest of the surviving spouse in the community property or quasi-community property, or both, which belongs to the surviving spouse pursuant to Section ~~204~~ 110.010 or ~~204.5~~ 110.020 and the court finds that the interest belongs to the surviving spouse, issue an order describing the property and confirming the ownership of the surviving spouse and any further orders which may be necessary to cause ownership of the property to be confirmed in the surviving spouse.

(3) Issue an order that the property which is not community property or quasi-community property passing to the surviving spouse is subject to administration under this division.

(c) Upon becoming final, an order (1) determining that property is community property or quasi-community property passing to the surviving spouse or (2) confirming the ownership of the surviving spouse of property belonging to the surviving spouse under Section ~~204~~ 110.010 or

~~2017~~ 110.020 shall be conclusive on all persons, whether or not they are in being.

31150

SEC. \_\_\_\_\_. Chapter 11 (commencing with Section 660) of Division 3 of the Probate Code is repealed.

SEC. \_\_\_\_\_. Chapter 11 (commencing with Section 660) is added to Division 3 of the Probate Code, to read:

CHAPTER 11. LEGACIES AND INTEREST

660. The provisions of this chapter are in all cases to be controlled by a testator's express intention.

661. In case of a bequest of the interest or income of a certain sum or fund, the interest or income accrues from the testator's death.

662. Legacies are distinguished and designated, according to their nature, as follows:

(a) A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort cannot be had to the other property of the testator.

(b) A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid.

(c) An annuity is a bequest of certain specified sums periodically; if the fund or property out of which a demonstrative legacy or an annuity is payable fails, in whole or in part, resort may be had to the general assets, as in the case of a general legacy.

(d) A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

(e) All other legacies are general legacies.

663. (a) General pecuniary legacies, including general pecuniary legacies in trust, if not paid prior to the first anniversary of the testator's death, bear interest thereafter at the rate of interest payable on a money judgment entered in this state.

(b) Annuities commence at the testator's death and are due at the end of the annual, monthly, or other specified period.

(c) Whenever an annuitant, legatee of a legacy for maintenance, or beneficiary of a trust is entitled to periodic payments or trust income commencing at the testator's death, he or she is entitled to interest on the amount of any unpaid accumulations of such payments or income held by the executor or administrator on each anniversary of the decedent's death, computed from the date of such anniversary at the rate of interest payable on a money judgment entered in this state.

664. (a) Unless otherwise provided by the will of the testator, subject to subdivision (b), all net income received during the period of administration from real and personal property not specifically or demonstrably devised or bequeathed, including net income from property sold during that period, shall be distributed pro rata as income to all of the following:

(1) Any trust or trusts of all or any part of the residuary estate.

(2) Any tenant or tenants for life or for a term of years of all or any part of the residuary estate.

(3) Any person or persons entitled absolutely and free of trust to all or any part of the residuary estate.

(b) Except as otherwise provided by will of the testator, none of the income referred to in subdivision (a) shall be distributed as income of a general pecuniary legacy in trust, except that the interest on a pecuniary legacy in trust provided for in Section 663 shall be distributed as income to the trust.

SEC. \_\_\_\_. Section 704.2 of the Probate Code is amended to read:

704.2. A claim may be filed by the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse for the payment of the debts of the deceased

spouse described in Section ~~205~~ 649.4 . The claim must be filed prior to the filing of a petition for final distribution. It shall set forth the reason why the debts are not barred by subdivision (b) of Section ~~205~~ 649.4 and a statement whether the debts remain unpaid or have been paid by the surviving spouse. If the surviving spouse is personally liable for the debts, the claim shall also include an inventory of the separate property of the surviving spouse and any community property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property which is exempt from ~~execution~~ enforcement of a money judgment .

31146

SEC. \_\_\_\_ . Section 736 of the Probate Code is amended to read:

736. When a testator devises ~~land~~ real property subject to a mortgage, deed of trust or other lien, and notwithstanding Section 204.400 the real property passes with a right of exoneration in accord with an intention indicated by the will, other property specifically devised or bequeathed shall not be sold for the purpose of exonerating the encumbered property, unless a contrary intention that the other property be sold is indicated by the will can be gathered from the terms of the will, read in the light of the circumstances surrounding its execution. A mere direction that ~~all the testator's~~ debts be paid is not sufficient evidence of such contrary intention .

SEC. \_\_\_\_ . Section 750 of the Probate Code is amended to read:

750. If the testator makes provision by his or her will, or designates the estate to be appropriated, for the payment of ~~his~~ the testator's debts, the expenses of administration, ~~or~~ family allowance, or family maintenance, they must be paid according to such provision or out of the estate thus appropriated, so far as the same is sufficient. If insufficient, that portion of the estate not disposed of by the will, if any, must be appropriated for that purpose; and if that is not sufficient, the property given to residuary legatees and devisees, and thereafter all other property devised and bequeathed is liable for the same, in

proportion to the value or amount of the several devises and legacies, but specific devises and legacies are exempt from such liability if it appears to the court necessary to carry into effect the intention of the testator, and there is other sufficient estate.

31450

SEC. \_\_. Section 754 of the Probate Code is amended to read:

754. (a) In selling property to pay debts, legacies, family allowance , family maintenance, or expenses, there shall be no priority as between personal and real property.

(b) When a sale of property of the estate is necessary for any ~~such~~ purpose described in subdivision (a) , or when it is for the advantage, benefit, and best interests of the estate and those interested therein that any property of the estate be sold, the executor or administrator may sell the ~~same property~~ , either at public auction or private sale, using his or her discretion as to which property to sell first, except as provided by Sections 750 and 751 ~~of this code~~ .

~~The~~ (c) If the property to be sold is the separate property of the decedent, the executor or administrator in making any such sale may sell the entire interest of the estate in the property or any lesser interest or estate therein.

(d) If the property to be sold is community or quasi-community property, the executor or administrator may sell half or less of the total amount of each class of fungible property, and half or less of each item of nonfungible property. The surviving spouse may object to a sale which does not comply with this subdivision without electing against the will of the decedent, unless the will expressly provides for an election if such objection is made.

950. The debts of the decedent, the expenses of administration , and the charges against the estate shall be paid in the following order:

- (1) Expenses of administration † .
- (2) Funeral expenses † .
- (3) Expenses of last illness † .
- (4) Family allowance † .
- (5) Debts having preference by the laws of the United States † .

(6) Wages, to the extent of nine hundred dollars (\$900), of each employee of the decedent, for work done or personal services rendered within 90 days prior to the death of the employer. If there is not sufficient money with which to pay all such labor claims in full the money available shall be distributed among the claimants in accordance with the amount of their respective claims † .

(7) Mortgages, judgments that are liens, and other liens, in the order of their priority, so far as they may be paid out of the proceeds of the encumbered property. If such proceeds are insufficient for that purpose, the part of the debt remaining unsatisfied shall be classed with the general demands against the estate † .

(8) Family maintenance.

~~(8)~~ (9) Judgments that are not liens rendered against the decedent in ~~his~~ the decedent's lifetime and all other demands against the estate, without preference or priority one over another.

32242/NZ

SEC. \_\_\_\_ . Section 1050 of the Probate Code is repealed.

~~1050.~~ A gift before death shall be considered as an ademption of a bequest or devise of the property given; but such gift shall not be taken as an advancement to an heir or as an ademption of a general legacy unless such intention is expressed by the testator in the grant or otherwise in writing, or unless the donee acknowledges it in writing to be such.

32244/NZ

SEC. \_\_\_\_ . Section 1051 of the Probate Code is repealed.

~~1051.~~ Any property, real or personal, given by the decedent in his lifetime as an advancement to an heir, is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and must be taken by such heir toward his share of the estate of the decedent. If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he shall not be

required to refund any part of such advancement. If the amount so received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

32245/NZ

SEC. \_\_\_\_ . Section 1052 of the Probate Code is repealed.

~~1052.~~ If the value of the property so advanced is expressed in the conveyance, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

32246/NZ

SEC. \_\_\_\_ . Section 1053 of the Probate Code is repealed.

~~1053.~~ If an heir receiving an advancement dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives or successors in interest of the heir receiving the advancement, in like manner as if the advancement had been made directly to them.

32247

SEC. \_\_\_\_ . Section 1054 of the Probate Code is amended to read:

1054. All questions ~~as to advancements made, or alleged to have been made,~~ by the decedent to his heirs, may arising under Section 204.440 (ademption) or 220.100 (advancement) shall be heard and determined by the court ; and ~~must shall~~ be specified in the decree assigning and distributing the estate; and the decree of the court, when it becomes final, is conclusive on all parties interested in the estate.

SEC. \_\_\_\_ . Section 1139 of the Probate Code is amended to read:

1139. (a) This article applies to all of the following:

(1) ~~a~~ A trust over which jurisdiction continues after distribution, as provided by Section 1120 ~~†~~ .

(2) ~~a~~ A trust subject to Chapter ~~10~~ ~~(commencing with Section 1751 of Division 1;~~ 8 (commencing with Section 206.500) of Part 1 of Division 2.

(3) ~~a~~ A trust subject to Article 2.5 (commencing with Section 1138) ~~of this chapter; and~~ .

(4) ~~any~~ Any other trust to which the provisions of this article are made applicable by statute or trust instrument.

(b) This chapter shall not be construed to prevent the transfer of the place of administration of a trust or of trust assets to another jurisdiction in any case where judicial approval of a transfer was not required under law in effect immediately prior to the effective date of this article.

(c) This article shall not apply to any proceeding or action pending on the effective date of this article.

08152

SEC. \_\_\_\_ . Section 1200.5 of the Probate Code is amended to read:

1200.5. (a) Notice shall be given in the manner prescribed in subdivision (b) upon the filing of any of the following:

(1) A petition under Section 641 of this code for the setting aside of an estate.

(2) A petition to set apart a probate 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) An account of an executor or administrator or trustee.

(12) A petition for partial or ratable or preliminary or final distribution.

(13) A petition for the delivery of the estate of a nonresident.

(14) A petition for determination of heirship or interests in an estate.

(15) A petition of a trustee for instructions.

(16) A petition for the appointment of a trustee.

(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.

(18) A petition for family maintenance.

(b) At least 10 days before the time set for the hearing of the petition or account, the petitioner or person filing the account shall cause notice of the time and place of hearing to be mailed to the executor or administrator, when he or she is not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or to 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 request 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.

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

(d) This section shall not apply to proceedings under Division 4 (commencing with Section 1400). When a provision of Division 4 applies

the provisions of this code applicable to executors or administrators to proceedings under Division 4, a reference to this section in the provisions applicable to executors or administrators shall be deemed to be a reference to Chapter 3 (commencing with Section 1460) of Part 1 of Division 4.

(e) The notice required by this section shall be in addition to the notice, if any, required to be given in the manner specified in Section 1200.

32693

SEC. \_\_\_\_ . Section 1215 of the Probate Code is amended to read:  
1215. As used in this article:

(1) "Notice" means notice of hearing which is to be sent by mail or personally served.

(2) "Trust proceeding" means a judicial proceeding involving a trust provided for by Chapter ~~10 (commencing with Section 175)~~ of ~~Division 4~~ 8 (commencing with Section 206.500) of Part 1 of Division 2 , or Chapter 19 (commencing with Section 1120) of this division, including, but not limited to proceedings for instructions, for settlement of trustee's accounts or distribution of trust assets upon partial or final termination of the trust.

34262

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

1240. An appeal may be taken from an order or the refusal to make an order:

(a) Granting or revoking letters testamentary or of administration.  
(b) Removing a trustee of a testamentary trust.  
(c) Admitting a will to probate or revoking the probate thereof.  
(d) Setting aside an estate claimed not to exceed twenty thousand dollars (\$20,000) in value.

(e) Setting apart property as a homestead or claimed to be exempt from execution.

(f) Granting or modifying a family allowance or family maintenance .

(g) Directing or authorizing the sale or conveyance or confirming the sale of property.

- (h) Directing or authorizing the granting of an option to purchase real property.
- (i) Adjudicating the merits of any claim under Section 851.5, 852 or 853.
- (j) Allocating debts under Section 980.
- (k) Settling an account of an executor or administrator or trustee, or instructing or appointing a trustee.
- (l) Instructing or directing an executor or administrator.
- (m) Directing or allowing the payment of a debt, claim, legacy, or attorney's fee.
- (n) Fixing, directing, or allowing payment of a trustee's compensation.
- (o) Determining heirship or the persons to whom distribution should be made or trust property should pass.
- (p) Distributing property.
- (q) Determining that property is community property passing or belonging to the surviving spouse pursuant to Section 655.
- (r) Fixing an inheritance tax or determining that none is due.
- (s) Authorizing a personal representative to invest or reinvest any surplus moneys pursuant to Section 584.5.

09042

SEC. \_\_\_\_ . Section 2580 of the Probate Code is amended to read:

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

- (1) Benefiting the conservatee or the estate.
- (2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.
- (3) Providing gifts for such purposes, and to such charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

- (1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life.

(6) Exercising options of the conservatee to purchase or exchange securities or other property.

(7) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to ~~renounce or~~ disclaim any interest ~~acquired by testate or intestate succession or by inter vivos transfer that may be disclaimed under Division 2c (commencing with Section 298.010) , including exercising the right of the conservatee to surrender the right to revoke a revocable trust .~~

(10) Exercising the right of the conservatee (i) to revoke a revocable trust or (ii) to surrender the right to revoke a revocable trust , but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust ~~(A)~~ (i) evidences an intent to reserve the right of revocation exclusively to the conservatee, ~~(B)~~ (ii) provides expressly that a conservator may not revoke the trust, or ~~(C)~~ (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.

(11) Making an election or an election and agreement referred to in Section ~~202~~ 649.1 .

SEC. \_\_\_\_\_. This act shall become operative only if Assembly Bill No. \_\_\_\_\_ is chaptered and becomes effective January 1, 1984, and in such case this act shall become operative on January 1, 1985, the same as Assembly Bill No. \_\_\_\_\_.

CONFORMING AMENDMENTS, ADDITIONS, AND REPEALS

The Commission has prepared a companion bill to make the necessary revisions (amendments, additions, and repeals) of existing codes to conform them to the recommended provisions relating to wills and intestate succession.<sup>1</sup>

To save printing costs, the entire text of the conforming revisions bill is not set out in this report. Instead, only those sections of the bill that are of special significance are set out.

In the material that follows, for each section (or, in some cases, article) of the conforming revisions bill, a heading or caption is set out, followed in some cases by the text of the code section being amended, added, or repealed. The Comment to the section (or, in some cases, article) being amended, added, or repealed follows, whether or not the text of the statute is included in this report.

30171

Civil Code § 226.12 (added). Notice to natural parent in case of step parent adoption

Comment. Section 226.12 provides for a notice to the natural parent who consents to a stepparent adoption. The notice informs the natural parent that a stepparent adoption does not cut off the child's right to inherit from or through the natural parent who gave up the child for adoption. See Prob. Code § 220.090.

Civil Code § 1389.4 (amended). Power of appointment

Comment. Section 1389.4 is amended to make the rule of representation in the case of a lapsed power of appointment the same as under the general anti-lapse statute. See Prob. Code § 204.050 (applying the rule of representation of Probate Code Section 220.060). See also Prob. Code §§ 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

Civil Code § 1624 (amended). Statute of frauds

Comment. Section 1624 is amended to delete the last portion of subdivision 6 (agreement to devise or bequeath property or to make any provision by will) which is superseded by Probate Code Section 111.110.

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1. The significant provisions of this bill are noted at various points in the discussion of the provisions of the new comprehensive statute in the preliminary portion of this publication.

Civil Code § 4352 (amended). Notice concerning will

Comment. Section 4352 is amended to reflect the change in the law concerning the effect of divorce or annulment on provisions in the will of one spouse in favor of the other. See Prob. Code § 202.030 and the Comment thereto.

Civil Code § 5129 (repealed). Courtesy and dower abolished

Comment. Former Section 5129 is continued in substance in Section 220.130 of the Probate Code.

Code of Civil Procedure § 1443 (technical amendment). Payment of property to state; applicable law

Comment. Section 1443 is amended to substitute a reference to the provision that supersedes former Section 231 which was formerly referred to in Section 1443.

30188

Education Code § 24606 (amended). State Teachers' Retirement System; provisions applicable in simultaneous death and similar situations

Comment. Section 24606 is revised in a manner consistent with Government Code Section 21371 (comparable provision of Public Employees' Retirement Law). For the provision relating to insurance policies, see Prob. Code § 114.050. See also Prob. Code §§ 114.510-114.550 (proceeding to determine whether one person survived another by required period of survival to take as survivor).

Government Code § 21371 (technical amendment). Public Employees' Retirement Law; provisions applicable in simultaneous death and similar situations

Comment. Section 21371 is amended to reflect the repeal of the Uniform Simultaneous Death Act (former Probate Code Sections 296-296.8) and the enactment of Probate Code Sections 114.010-114.550. For the provision relating to insurance policies, see Prob. Code § 114.050. See also Prob. Code §§ 114.510-114.550 (proceeding to determine whether one person survived another by required period of survival to take as survivor).

09038

Probate Code § 298.280 (amended). Effect of disclaimer

Comment. Section 298.280 is amended to add subdivision (b). Paragraph (1) of subdivision (b) is a new provision designed to prevent an heir from disclaiming property for the purpose of increasing the intestate share of his or her line at the expense of other lines of the decedent's descendants. For example, suppose the decedent has two children: The disclaimant (C-1) is living and has two children (GC-1 and GC-2, the decedent's grandchildren). The decedent's other child (C-2) has pre-

deceased the decedent leaving one child (GC-3). But for the disclaimer, C-1's share is one-half and GC-3 takes the other half. See Section 220.060. If the disclaimant (C-1) is treated as having predeceased the decedent as provided in subdivision (a) of Section 298.280 and the per capita rule of Section 220.060 is applied, the estate would be divided at the grandchildren's generation, with GC-1, GC-2, and GC-3 each taking one-third. Paragraph (1) of subdivision (b) precludes the disclaimer from reducing the estate to which GC-3 would otherwise be entitled were the disclaimer not exercised.

Paragraph (2) of subdivision (b) makes clear that the rule governing advancements and the rule governing charging a debt against an intestate share apply notwithstanding a disclaimer.

Note. Section 298.280 is a section proposed to be added to the Probate Code in a separate Commission recommendation. See Recommendation Relating to Disclaimer of Testamentary and Nontestamentary Interests, 16 Cal. L. Revision Comm'n Reports \_\_\_\_ (1982).

18309

Probate Code § 300 (amended). Passage of decedent's property

Comment. Section 300 is amended to add the reference to payment of family maintenance. See generally Sections 253.010-253.070.

Probate Code § 323 (technical amendment). Persons who may petition for probate

Comment. Section 323 is amended to delete the reference to nuncupative wills, the provisions authorizing such wills having been repealed in 1982. See 1982 Cal. Stats. ch. 187.

Probate Code § 328.3 (added). Duress, menace, fraud, or undue influence

Comment. Section 328.3 continues the substance of former Section 22.

Probate Code § 328.7 (added). Conditional will

Comment. Section 328.7 continues former Section 24.

Probate Code § 350 (repealed). Proof of lost or destroyed will

Comment. Former Section 350 is not continued. Thus, any revoked will may be proved in probate whether or not the will is physically in existence. The provisions of such a will are provable by a preponderance of the evidence and may be proved by a single witness. See also Sections 351-353.

Probate Code § 351 (technical amendment). Proof of lost or destroyed will

Comment. Section 351 is amended to make clear that the testimony that must be reduced to writing is the testimony of the witnesses whose testimony is offered to prove the provisions of the will. See former Section 350 which related to testimony offered to prove the provisions of the will. See also Section 374 (perpetuation of testimony of subscribing witnesses).

Probate Code § 351.5 (added). Lost will not presumed revoked

Comment. Section 351.5 is new and eliminates the presumption under prior law that the testator destroyed the will with intent to revoke it if it is shown (1) that the will was in possession of the testator before death, (2) that the testator was competent until death, and (3) that after death the will cannot be found. See 7 B. Witkin, Summary of California Law Wills and Probate § 381, at 5844 (8th ed. 1974). The presumption of prior law was one affecting the burden of producing evidence, not the burden of proof. Estate of Obernolte, 91 Cal. App.3d 124, 153 Cal. Rptr. 798 (1979). Section 351.5 is consistent with Section 3-407 of the Uniform Probate Code which puts the burden of establishing that a will has been revoked on the contestant of the will. Nothing in Section 351.5 affects the trier of fact from drawing of an inference of revocation from the circumstances in a particular case. See the Comment to Evid. Code § 600. Compare Estate of Moramorco, 86 Cal. App.2d 326, 338, 194 P.2d 740 (1948). See generally 7 B. Witkin, Summary of California Law Wills and Probate § 382, at 5845 (8th ed. 1974).

Probate Code § 422 (technical amendment). Persons entitled to letters

Comment. Section 422 is amended to delete the reference to relatives of a predeceased spouse. Such relatives no longer take by intestate succession. See Section 220.030 (intestate share), 261.010 (right of relatives of predeceased spouse to escheated property).

Probate Code § 632 (technical amendment). Estates not exceeding \$30,000

Comment. Section 632 is amended to substitute a reference to Section 649.1 which supersedes former Section 202.

Probate Code § 640 (technical amendment). Authority to set aside estate

Comment. Section 640 is amended to substitute a reference to the provision that replaced those formerly referred to in the section.

Probate Code § 641 (technical amendment). Petition to set aside estate

Comment. Section 641 is amended to substitute a reference to the provision that supersedes those formerly referred to in the section.

Probate Code § 645 (technical amendment). Decree

Comment. Section 645 is amended to substitute a reference to the provision that supersedes those formerly referred to in the section.

Probate Code § 645.3 (technical amendment). Personal liability for unsecured debts of decedent

Comment. Section 645.3 is amended to substitute references to the provisions that supersede those formerly referred to in the section.

18499

Probate Code §§ 649.1-649.5 (added). Administration of community and quasi-community property

Comment. Sections 649.1-649.5 continue the substance of former Sections 202-205 and a portion of former Section 206. The source of each section is indicated below.

| <u>New Section</u> | <u>Former Section</u> |
|--------------------|-----------------------|
| 649.1              | 202                   |
| 649.2              | 203                   |
| 649.3              | 204                   |
| 649.4              | 205                   |
| 649.5              | 206 (portion)         |

In Section 649.4, "cross-complaints" is substituted for "counterclaims" which appeared in former Section 205. The counterclaim is abolished. See Code Civ. Proc. § 428.80.

Probate Code § 650 (technical amendment). Petition to have community or quasi-community property not administered in the estate

Comment. Section 650 is amended to correct the cross-references in view of the recodification of the provisions to which reference formerly was made. A reference to quasi-community property has been added to paragraph (5) of subdivision (a) to conform to Section 655 and to subdivision (c) to conform that subdivision to Section 649.1.

Probate Code § 655 (technical amendment). Court order

Comment. Section 655 is amended to correct the cross-references to former Sections 201 and 201.5 in view of the recodification of those provisions as Sections 110.010 and 110.020.

24591

Probate Code §§ 660-684 (repealed). Support of the family

Comment. Former Sections 660-684 are superseded by Sections 250.010-252.070.

Section 660. Subdivision (a) of former Section 660 is continued in substance in Section 250.010. Subdivision (b) of former Section 660 is superseded by Sections 250.110 and 251.010.

Section 661. Subdivision (a) of former Section 661 is continued in Section 251.020. Subdivisions (b) and (c) of former Section 661 are continued in Section 251.030. Subdivision (d) of former Section 661 is continued in Section 251.050.

Section 662. Former Section 662 is continued in substance in Section 251.060.

Section 663. Former Section 663 is continued in Section 251.070.

Section 664. Former Section 664 is continued in Section 251.040.

Section 665. Former Section 665 is continued in subdivisions (a) and (b) of Section 251.080.

Section 666. Subdivision (a) of former Section 666 which defined "quasi-community property" is superseded by Section 100.380. Subdivision (b) of former Section 666 which defined "separate property" as not including quasi-community property is not continued. It is clear from the statutory context that separate property is not intended to include quasi-community property.

Section 680. The first sentence of former Section 680 is continued in substance in subdivision (a) of Section 252.010 and subdivision (a) of Section 252.040. The portion of the second sentence of former Section 680 concerning the priority of the family allowance is not continued, since the matter is already covered by Section 950. The portion of the second sentence concerning retroactivity of the order to the date of death is continued in substance in Section 252.030.

Section 681. Former Section 681 is continued in substance in Section 252.020 and subdivision (b) of Section 252.040.

Section 682. Former Section 682 is continued in substance in subdivision (b) of Section 252.010.

Section 683. Former Section 683 is continued in substance in Section 252.060.

Section 684. Former Section 684 is continued in substance in Section 252.070.

27238

Probate Code §§ 660-664 (added). Legacies and interest

Comment. Sections 660-664 continue the substance of former Sections 160-163. The source of each section is indicated below.

| <u>New Section</u> | <u>Former Section</u> |
|--------------------|-----------------------|
| 660                | 163                   |
| 661                | 160                   |
| 662                | 161                   |
| 663                | 162                   |
| 664                | 162.5                 |

29190

Probate Code § 704.2 (technical amendment). Claim for debts of deceased spouse

Comment. Section 704.2 is amended to substitute a reference to Section 649.4 which continues the substance of former Section 205.

Probate Code § 736 (amendment). No sale of specifically devised property to exonerate other encumbered property

Comment. Section 736 is amended in recognition of the new rule under Section 204.400 pursuant to which a specific devise passes subject to any mortgage, deed of trust, or other lien, unless the will provides for exoneration. See Sections 204.015, 204.400.

Probate Code § 750 (amended). Order of resort to estate assets

Comment. Section 750 is amended to add the reference to family maintenance. See generally Sections 253.010-253.070.

Probate Code § 754 (amended). Sale of estate property

Comment. Section 754 is amended to add the payment of family maintenance as a purpose for which estate property may be sold, and to provide different rules concerning how much estate property may be sold depending on whether the property is the separate property of the decedent or is community or quasi-community property. The provisions for family maintenance are found in Sections 253.010-253.070.

Subdivision (c), which authorizes sale of the entire interest of the estate in the decedent's separate property or any lesser interest or estate therein, continues prior law.

Subdivision (d) is new and recognizes California's item theory of community property ownership, pursuant to which the surviving spouse has a half interest in each item of community property, rather than a half interest in the aggregate of all community property. See *Dargie v. Patterson*, 176 Cal. 714, 169 P. 360 (1917). Subdivision (d) provides a limited exception to item theory ownership in the case where the community property is fungible, such as shares of stock. In such a case, subdivision (d) authorizes sale (when otherwise necessary) of half of the total amount of such fungible property, rather than half of each item (e.g., half of each share of stock) as strict application of the item theory would require. It was not clear under prior law how Section 754 applied to sales of community property in the estate.

29328

Probate Code § 950 (amended). Order of payment of expenses, debts, and charges

Comment. Section 950 is amended to add the reference to family maintenance. The provisions for family maintenance are found in Sections 253.010-253.070.

Probate Code § 1050 (repealed). Gift before death

Comment. Former Section 1050 is superseded by Sections 204.440 and 220.100.

Probate Code § 1051 (repealed). Advancement as part of estate; deduction from share

Comment. Former Section 1051 is not continued. The former California rules relating to advancement and ademption by satisfaction found in

former Sections 1050, 1051, and 1052 are superseded by Sections 204.440 and 220.100. Former Section 1051 was a procedural section and has been omitted as unnecessary.

Probate Code § 1052 (repealed). Determination of value

Comment. Former Section 1052 is superseded by subdivisions (b) and (c) of Section 204.440 and by subdivisions (b) and (c) of Section 220.100. See the Comments to Sections 204.440 and 220.100.

Probate Code § 1053 (repealed). Advancement to predeceased heir

Comment. Former Section 1053 is superseded by subdivision (d) of Section 220.100. The rule under former Section 1053 that if the donee of an advancement predeceases the donor, the amount of the advancement is deducted from the shares the heirs of the donee would receive from the donor's estate is reversed under Section 220.100: The advancement is no longer charged against the donee's issue unless such a provision is included in a contemporaneous writing by the donor or in a contemporaneous written acknowledgment by the donee.

29335

Probate Code § 1054 (amended). Determination of questions as to advancements and ademp-tions

Comment. Section 1054 is amended to refer to the section dealing with advancements and to extend the application of the section to ademp-tions.

Probate Code § 1139 (technical amendment). Application of article

Comment. Section 1139 is amended to substitute a reference to the provisions relating to life insurance and other trusts which replaced the provisions formerly referred to in the section.

Probate Code § 1200.5 (amended). Manner of giving notice in certain instances

Comment. Section 1200.5 is amended to add the reference to a petition for family maintenance. For the provisions relating to family maintenance, see Sections 253.010-253.070.

Probate Code § 1215 (technical amendment). Notice in trust proceedings

Comment. Section 1215 is amended to substitute a reference to the provisions that replaced the provisions formerly referred to in the section.

Probate Code § 1240 (amended). Appeal of orders or refusal to make orders

Comment. Section 1240 is amended to add the reference to family maintenance. For the provisions relating to family maintenance, see Sections 253.010-253.070.

09041

Probate Code § 2580 (technical amendment). Petition for conservator to exercise substituted judgment

Comment. Section 2580 is amended to correct the reference in paragraphs (9) and (11) of subdivision (b), to transfer a portion of subdivision (b)(9) (relating to revoking revocable trusts) to subdivision (b)(10), and to make other nonsubstantive revisions.

Note. Subdivision (b)(9) substitutes a reference to a new disclaimer statute proposed in a separate recommendation. See Recommendation Relating to Disclaimer of Testamentary and Other Interests, 16 Cal. L. Revision Comm'n Reports \_\_\_\_ (1982).

Operative date