

Second Supplement to Memorandum 84-66

Subject: Study L-658 - Probate Law and Procedure (Distribution of Small Estate Without Administration)

Some months ago, we received a letter from a C.E.B. staff attorney, Mr. Jeffrey Dennis-Strathmeyer, suggesting that the last sentence of Probate Code Section 631 (collection of personal property by affidavit) be revised to bring it into conformity with case law. That sentence provides that payment of money or transfer of property pursuant to an affidavit of entitlement does not preclude administration of the estate "when necessary to enforce payment of the decedent's debts." The implication that administration may be had to enforce payment of debts but not for other purposes is incorrect. Administration may be had as in any other case. See *Brezzo v. Brangero*, 51 Cal. App. 79, 196 P. 87 (1921); Code Commissioners' Note to Probate Code § 631; Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 607 (1931). The staff would make this clear by revising the last sentence of Section 631 as follows:

But such payment or transfer shall not preclude administration
~~when necessary to enforce payment~~ of the decedent's debts estate.

Respectfully submitted,

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