

Memorandum 84-90

Subject: Study L-658 - Probate Law and Procedure (Transfer of Title to Vehicles, Undocumented Vessels, Manufactured Homes, Mobilehomes, and Commercial Coaches Without Probate)

At the last meeting, the Commission approved the staff proposal to split out from the recommendation relating to distribution of small estates without administration the portion relating to transfer of title to vehicles, undocumented vessels, manufactured homes, mobilehomes, and commercial coaches without probate. Attached to this memorandum is a staff draft of a recommendation dealing with these matters. If the Commission approves this recommendation, this will be included in the 1985 legislative program. The cognizant state departments--the Department of Motor Vehicles and the Department of Housing and Community Development--have already approved the proposal in substance.

Respectfully submitted,

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Staff Draft

RECOMMENDATION

relating to

TRANSFER OF TITLE TO VEHICLES, UNDOCUMENTED VESSELS, MANUFACTURED HOMES, MOBILEHOMES, AND COMMERCIAL COACHES WITHOUT PROBATE

Existing law provides a simple and expeditious procedure for transfer at death of title to a vehicle,¹ undocumented vessel,² manufactured home,³ mobilehome,⁴ or commercial coach⁵ registered by the state. If

1. A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. Veh. Code § 670.
2. "Undocumented vessel" means a vessel which is not required to have and does not have a valid marine document issued by the cognizant federal agency. Veh. Code § 9840. "Vessel" includes every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to or guided on such permanently fixed course by means of a mechanical device on a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled or by means of a mechanical device attached to the watercraft itself. Id. The Commission is informed that commercial vessels over 31 feet in length must be federally registered. Other vessels may be federally registered if the owner so chooses. Vessels not federally registered that are in California waters must be "numbered" by the California Department of Motor Vehicles. Veh. Code § 9850.
3. "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. "Manufactured home" also includes a structure which satisfies the foregoing definition except the size requirements if the manufacturer voluntarily files a certification and complies with the standards established under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, and includes a mobilehome subject to the National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. Section 5401 et seq.). Health & Safety Code § 18007.
4. "Mobilehome" means a structure transportable in one or more sections, designed and equipped to contain not more than two dwelling units to be used with or without a foundation system. "Mobilehome" does not include a recreational vehicle, commercial coach, or factory-built housing. Health & Safety Code § 18008.
5. "Commercial coach" means a structure transportable in one or more sections, designed and equipped for human occupancy for industrial,

the deceased owner leaves no other property requiring probate, the surviving spouse or other near relatives⁶ of the decedent, if otherwise entitled to the property, may have the registration transferred into his or her name by presenting the registering agency with a certificate signed under penalty of perjury.⁷

The statute governing manufactured homes, mobilehomes, and commercial coaches is not consistent with the statutes governing vehicles and undocumented vessels.⁸ It is not clear whether the statutes may be used by a beneficiary under the decedent's will who is not a near relative of the decedent.⁹ A vehicle registered under the Vehicle Code, a manufactured

professional, or commercial purposes, which is required to be moved under permit, and includes a trailer coach as defined in Section 635 of the Vehicle Code. Health & Safety Code § 18001.8.

6. The other near relatives who may use the summary transfer procedure are the decedent's children, issue of deceased children, parents, brothers and sisters, issue of a deceased brother or sister, and grandparents. Prob. Code § 630.
7. See Health & Safety Code § 18102; Veh. Code §§ 5910, 9916. The required documentation is: (1) the certificate of ownership and registration card (certificate of number in the case of an undocumented vessel), if available; (2) a certified statement of the heir or beneficiary setting forth the fact of survivorship or heirship and the names and addresses of other heirs; (3) if required by the department, a certificate of death of the decedent; (4) a statement that there are no creditors of the decedent or that they have been paid in full or otherwise discharged. Id. This procedure is closely analogous to the procedure under Section 630 of the Probate Code which permits the surviving spouse and other near relatives of the decedent to collect the decedent's personal property upon presentation of an affidavit, if the estate value does not exceed \$60,000.
8. Compare Health & Safety Code § 18102 with Veh. Code §§ 5910, 9916.
9. In the case of a manufactured home, mobilehome, or commercial coach, the summary procedure may be used by "the surviving heir or beneficiary in the order named in Section 630 of the Probate Code" unless the property "is, by will, otherwise bequeathed." Health & Safety Code § 18102. In the case of a vehicle or undocumented vessel, the summary procedure may be used by "the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code" unless the property "is by will otherwise bequeathed." Veh. Code §§ 5910, 9916. The Commission is advised by the Department of Housing and Community Development that the department routinely uses Section 18102 of the Health and Safety Code to transfer title to manufactured homes, mobilehomes, and commercial coaches to persons entitled to the property under the decedent's will.

home, a mobilehome, or a commercial coach may be transferred by the summary method without regard to its value¹⁰ if the decedent leaves no other property requiring probate, but an undocumented vessel may be so transferred if the decedent leaves no other property requiring probate only if the total value of the decedent's property in California does not exceed \$60,000.¹¹

The Commission recommends legislation to make uniform the various provisions governing transfer of registration of the decedent's title or interest in a vehicle, undocumented vessel, manufactured home, mobilehome, or commercial coach. The legislation should do the following:

(1) It should be made clear that a manufactured home, mobilehome, commercial coach, vehicle, or undocumented vessel may be transferred by the summary method to persons entitled under the decedent's will, as well as to those who are entitled to take in case of intestate succession. This is consistent with present administrative interpretation,¹² and with the general provisions for transfer of the decedent's personal property upon presentation of an affidavit of entitlement.¹³

(2) The dollar maximum on the value of the decedent's estate should be eliminated for an undocumented vessel registered under the Vehicle Code, making these provisions consistent with those for a vehicle, manufactured home, mobilehome, and commercial coach.

(3) Transfer of title should be delayed until 30 days have elapsed since the decedent's death.¹⁴ This delay will not interfere with the

10. Health & Safety Code § 18102; Veh. Code § 5910. The statute governing transfer at death of mobilehomes and commercial coaches was first enacted in 1980 with no value limit. See 1980 Cal. Stats. ch. 1149, § 34 (former Health & Safety Code § 18076.27). Manufactured homes were added to the statute in 1983. See 1983 Cal. Stats. ch. 1076, § 76 (amending Health & Safety Code § 18102). The statute governing vehicles registered under the Vehicle Code formerly provided for summary transfer only if the vehicle did not exceed a value of \$1,000. See 1935 Cal. Stats. ch. 27 (former Veh. Code § 185). The value limit was removed for vehicles registered under the Probate Code in 1949. See 1949 Cal. Stats. ch. 1522.

11. Veh. Code § 9916.

12. Letter from Department of Housing and Community Development to California Law Revision Commission (September 19, 1984).

13. Prob. Code § 630.

14. A number of other states that provide for summary collection of the decedent's personal property by affidavit require some period of delay after the decedent's death before the property may be collected. See Ariz. Rev. Stat. Ann. § 14-3971 (Supp. 1983-84) (30-day delay); Ark. Stat. Ann. § 62-2127 (Supp. 1983) (45-day delay); Del. Code

survivor's use of the vehicle, but will allow time for competing claimants, if any, to come forward.

(4) Other technical changes should be made.¹⁵

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

An act to amend Section 18102 of the Health and Safety Code, to amend Section 630 of the Probate Code, and to amend Sections 5910 and 9916 of, and to add Section 9852.5 to, the Vehicle Code, relating to decedents' estates.

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

38027

Health & Safety Code § 18102 (amended). Transfer of manufactured home, mobilehome, or commercial coach without probate

SECTION 1. Section 18102 of the Health and Safety Code is amended to read:

18102. (a) Upon If 30 days have elapsed since the death of a registered or legal owner of a manufactured home, mobilehome, or commercial coach registered under this part, without the decedent leaving other property necessitating probate, ~~unless the manufactured home, mobilehome, or commercial coach is, by will, otherwise bequeathed,~~ and irrespective of the value of the manufactured home, mobilehome, or

Ann. tit. 12, § 2306 (Supp. 1982) (30-day delay); Mo. Ann. Stat. § 473.097 (Vernon Supp. 1984) (30-day delay); Tex. Prob. Code Ann. § 137 (Vernon Supp. 1984) (30-day delay).

15. The Commission recommends the following technical changes:

(1) A new section drawn from Vehicle Code Section 4150.5 should be added to provide for co-ownership of an undocumented vessel, to provide for passage of title on the death of one co-owner, and to provide rules for transfer by co-owners during lifetime.

(2) Section 630 of the Probate Code should be revised so that the decedent's heirs listed in that section are in the same order as provided for intestate succession under Section 6402 of the Probate Code. This change is needed because some provisions of the Health and Safety Code and the Vehicle Code provide that the decedent's surviving heirs take in the order named in Section 630 of the Probate Code. Health & Safety Code § 18102; Veh. Code §§ 5910, 9916.

(3) The contents of the certificate that the heir or beneficiary must present to the department should be standardized.

commercial coach, the following person may secure a transfer of registration of the title or interest of the decedent:

(1) The surviving husband or wife or other heir or beneficiary in the order named in Section 630 of the Probate Code unless the manufactured home, mobilehome, or commercial coach is, by will, otherwise bequeathed.

(2) The beneficiary who takes the manufactured home, mobilehome, or commercial coach under the will of the decedent where the manufactured home, mobilehome, or commercial coach is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the decedent upon presenting to the department all of the following:

~~(a)~~ (1) The appropriate certificate of title and registration card, if available.

~~(b)~~ A certified statement of the heir or beneficiary setting forth his or her interest in the estate of the decedent.

~~(c)~~ The names and addresses of any other heirs or beneficiaries.

~~(d)~~ If required by the department, a certificate of the death of the decedent.

~~(e)~~ A statement that there are no creditors of the decedent or, if so, that creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The undersigned is entitled to the manufactured home, mobilehome, or commercial coach either (i) as the surviving heir(s) named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary(ies) under the decedent's last will if the decedent left a will, and no one has a right to the decedent's manufactured home, mobilehome, or commercial coach that is superior to that of the undersigned.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. Section 18102 is amended to add the provision for a 30-day delay after the decedent's death, and to make clear that a beneficiary who takes a manufactured home, mobilehome, or commercial coach under the decedent's will may secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. This is consistent with the practice of the department. Since Section 18102 applies only where the decedent left no other property necessitating probate, the amendment to Section 18102 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 18102 consistent with Section 630 of the Probate Code which avoids the need for probate by permitting the beneficiaries under the decedent's will to "have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to the beneficiary entitled to the property upon furnishing the person acting as registrar or transfer agent with an affidavit or declaration under penalty of perjury showing the right of the persons to have such evidences transferred. For comparable provisions, see Veh. Code §§ 5910 (vehicle), 9916 (vessel).

043/170

SEC. 2. Section 630 of the Probate Code is amended to read:

630. (a) Subject to Section 632, subdivision (b) applies only where the gross value of the decedent's real property in this state, if any, does not exceed ten thousand dollars (\$10,000) and the gross value of the decedent's real and personal property in this state (excluding any ~~motor~~ vehicle registered under the Vehicle Code, any vessel numbered under the Vehicle Code, or any manufactured home, mobilehome, or commercial coach registered under the provisions of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, of which the decedent is the owner or legal owner) over and above any amounts due to the decedent for services in the armed forces of the United States, and over and above the amount of salary not exceeding five thousand dollars (\$5,000), including compensation for unused vacation, owing to decedent for services from any employment, does not exceed sixty thousand dollars (\$60,000).

(b) The surviving spouse, the children, the issue of deceased children, ~~a grandparent, parent~~ parents, brothers or sisters of the decedent, the issue of a deceased brother or sister, the grandparents, or the guardian or conservator of the estate of any person bearing such relationship to the decedent, or the trustee named under a trust agreement executed by the decedent during his or her lifetime, the primary beneficiaries of which bear such relationship to the decedent, if such person or persons has or have a right to succeed to the property of the decedent, or the sole beneficiary, or all of the beneficiaries under the last will of the decedent, regardless of whether or not any beneficiary is related to the decedent, may, without procuring letters of administration, or awaiting the probate of the will, collect any money due the decedent (including money of the decedent on deposit in a financial institution as defined in Section 40), receive the tangible personal property of the decedent, and have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred to such person or persons upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of debt, obligation, interest, right, stock, or chose in action, with an affidavit or declaration under penalty of perjury showing the right of the person or persons to receive such money or property, or to have such evidences transferred. Nothing in this subdivision applies to real property or an interest in real property.

(c) If the decedent's will nominates a custodian to receive a bequest to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state and the nomination has not been revoked and the other conditions of subdivisions (a) and (b) are satisfied, the custodian may collect the bequest as provided in subdivision (b) if the beneficiary has not attained the age at which the custodianship is to terminate.

(d) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subdivision (b) and is discharged from liability in so doing as provided in Section 631.

(e) A public administrator who has taken charge of the estate of a decedent as provided in Section 1140 may refuse to pay money or deliver property of the estate pursuant to this article if payment of the costs and fees described in Section 1144.5, subject to the dollar limitations specified in that section, has not first been made or adequately assured to the satisfaction of the public administrator.

Comment. Subdivision (a) of Section 630 is amended to expand the types of property that are excluded in determining the gross value of the decedent's property to include all vehicles registered under the Vehicle Code, vessels numbered under the Vehicle Code, and manufactured homes registered under the Health & Safety Code. These additional types of property are covered by special statutory provisions comparable to the special statutory provisions that cover the types of property formerly excluded under Section 630 (motor vehicles, mobilehomes, and commercial coaches). See Health & Safety Code § 18102 (manufactured homes, mobile-homes, and commercial coaches), Veh. Code §§ 5910 (vehicles), 9916 (vessels).

Subdivision (b) of Section 630 is amended so that the heirs of the decedent are listed in the same order as provided for intestate succession under Section 6402. This change is needed because some special statutory provisions provide that the decedent's surviving heirs take in the order named in Section 630. Health & Safety Code § 18102, Veh. Code §§ 5910, 9916.

38658

Vehicle Code § 5910 (amended). Transfer of vehicle without probate

SEC. 3. Section 5910 of the Vehicle Code is amended to read:

5910. (a) Upon If 30 days have elapsed since the death of an owner or legal owner of any vehicles a vehicle registered under this code without the decedent leaving other property necessitating probate, the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code, unless the vehicle is by will otherwise bequeathed, and irrespective of the value of the vehicle, the following person may secure a transfer of registration of the title or interest of the decedent:

(1) The surviving husband or wife or other heir in the order named in Section 630 of the Probate Code unless the vehicle is, by will, otherwise bequeathed.

(2) The beneficiary who takes the vehicle under the will of the decedent where the vehicle is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the deceased decedent upon presenting to the department the all of the following:

(1) The appropriate certificate of ownership and registration card, if available; and a certified statement of the person setting forth the fact of survivorship or heirship, and the names and addresses of any other heirs; and, if required by the department, a certificate of the death of the deceased together with a statement that there are no creditors of the deceased or, if so, that the creditors of the deceased have been paid in full or the claims have been otherwise discharged.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The undersigned is entitled to the vehicle either (i) as the surviving heir(s) named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary(ies) under the decedent's last will if the decedent left a will, and no one has a right to the decedent's vehicle that is superior to that of the undersigned.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

(c) The department may prescribe a combined form for use under this section and Section 9916.

Comment. Section 5910 is amended to add the provision for a 30-day delay after the decedent's death, and to permit a beneficiary who takes a vehicle under the decedent's will to secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. Since Section 5910 applies only where the decedent left no other property necessitating probate, the amendment to Section

5910 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 5910 consistent with Section 630 of the Probate Code which avoids the need for probate by permitting the beneficiaries under the decedent's will to "have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to the beneficiary entitled to the property upon furnishing the person acting as registrar or transfer agent with an affidavit or declaration under penalty of perjury showing the right of the persons to have such evidences transferred. For comparable provisions, see Health & Safety Code § 18102 (manufactured home, mobilehome, or commercial coach), Veh. Code § 9916 (vessel). Subdivision (c) of Section 5910, which permits a combined form, is consistent with the prior practice which used a combined form.

368/262

Vehicle Code § 9852.5 (added). Vessel coownership registration

SEC. 4. Section 9852.5 is added to the Vehicle Code, to read:

9852.5. Ownership of an undocumented vessel subject to registration may be held by two (or more) coowners as follows:

(a) A vessel may be registered in the names of two (or more) persons as coowners in the alternative by the use of the word "or." A vessel so registered in the alternative shall be deemed to be held in joint tenancy. Each coowner shall be deemed to have granted to the other coowners the absolute right to dispose of the title and interest in the vessel. Upon the death of a coowner the interest of the decedent shall pass to the survivor as though title or interest in the vessel was held in joint tenancy unless a contrary intention is set forth in writing upon the application for registration.

(b) A vessel may be registered in the names of two (or more) persons as coowners in the alternative by the use of the word "or" and if declared in writing upon the application for registration by the applicants to be community property, or tenancy in common, shall grant to each coowner the absolute power to transfer the title or interest of the other coowners only during the lifetime of such coowners.

(c) A vessel may be registered in the names of two (or more) persons as coowners in the conjunctive by the use of the word "and" and shall thereafter require the signature of each coowner or his personal representative to transfer title to the vessel, except where title to the vessel is set forth in joint tenancy, the signature of each coowner or his or

her personal representative shall be required only during the lifetime of the coowners, and upon death of a coowner title shall pass to the surviving coowner.

(d) The department may adopt suitable abbreviations to appear upon the certificate of ownership and certificate of number to designate the manner in which title to the vessel is held if set forth by the coowners upon the application for registration.

Comment. Section 9852.5 is drawn from Section 4150.5 (vehicles).

38659

Vehicle Code § 9916 (amended). Transfer of vessel without probate

SEC. 5. Section 9916 of the Vehicle Code is amended to read:

9916. (a) Upon If 30 days have elapsed since the death of an owner or legal owner of any vessel numbered under this code without the decedent leaving other property necessitating probate, the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code, unless the vessel is by will otherwise bequeathed, and if the total value of the decedent's property in this state does not exceed the amount specified in Section 630 of the Probate Code, and irrespective of the value of the vessel, the following person may secure a transfer of ownership of the title or interest of the decedent:

(1) The surviving husband or wife or other heir in the order named in Section 630 of the Probate Code unless the vessel is, by will, otherwise bequeathed.

(2) The beneficiary who takes the vessel under the will of the decedent where the vessel is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of ownership of the title or interest of the deceased decedent upon presenting to the department the all of the following:

(1) The appropriate certificate of ownership and certificate of number, if available, and a certified statement of the person setting forth the fact of survivorship or heirship, and the names and addresses of any other heirs, and, if required by the department, a certificate of the death of the deceased, together with a statement that there are no creditors of the deceased or, if so, that the creditors of

the deceased have been paid in full or the claims have been otherwise discharged.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The undersigned is entitled to the vessel either (i) as the surviving heir(s) named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary(ies) under the decedent's last will if the decedent left a will, and no one has a right to the decedent's vessel that is superior to that of the undersigned.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. Section 9916 is amended (1) to add the provision for a 30-day delay after the decedent's death, (2) to permit a beneficiary who takes a vessel under the decedent's will to secure a transfer of ownership of the title or interest of the decedent without the need to probate the decedent's estate and (3) to eliminate the provision that made the section not applicable if the total value of the decedent's property in this state exceeds the amount specified in Section 630 of the Probate Code.

Since Section 9916 applies only where the decedent left no other property necessitating probate, the amendment making Section 9916 apply where the beneficiary takes the vessel under the decedent's will avoids the need to probate the decedent's estate merely to secure a transfer of ownership of the title or interest of the decedent. This amendment makes Section 9916 consistent with Section 630 of the Probate Code. See the Comment to Section 5910.

Elimination of the provision making Section 9916 not applicable where the value of decedent's property in this state exceeds the amount specified in Probate Code Section 630 makes Section 9916 consistent with Section 5910 (vehicles) and Health & Safety Code Section 18102 (manufactured home, mobilehome, or commercial coach).