

Memorandum 85-18

Subject: Study L-630 - Wills and Intestate Succession (Follow-up  
Legislation 1985)

Attached as Exhibit 2 is a letter from Robert J. Dell'Ergo suggesting a technical revision in Section 649.1 of the Probate Code. (The suggestion in the letter is not directed to the latest amended version of the section.)

The staff agrees that a nonsubstantive revision should be made along the lines suggested by Mr. Dell'Ergo. Our suggested revision is set out in Exhibit 1 attached. We propose that this revision be added to the urgency bill introduced to clarify the notice requirement in case of stepchildren and foster children.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

## EXHIBIT 1

649.1. (a) Except as provided in Section 649.3, when a husband or wife dies intestate leaving property that passes to the surviving spouse under Section 6401, or dies testate and by his or her will bequeaths or devises all or a part of his or her 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 following property may be administered under this division:

(1) The one-half of the community property that belongs to the decedent under Section 100, the one-half of the quasi-community property that belongs to the decedent under Section 101, and the separate property of the decedent.

(2) Both the property described in paragraph (1) and the one-half of the community property that belongs to the surviving spouse under Section 100, and the one-half of the quasi-community property that belongs to the surviving spouse under Section 101.

(c) The election shall 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.

(d) 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 one-half of the community property that belongs to the surviving spouse under Section 100 and the one-half of the quasi-community property that belongs to the surviving spouse under Section 101 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.

## EXHIBIT 2

## DELL'ERGO &amp; TINSLEY

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Re: Probate Code §649.1(a)

Gentlemen:

The legislature screwed up again because they can't read or write English. For all of the untold hours, committee meetings, drafting and re-drafting, the above-referenced section currently reads:

"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."

BUT, it should read:

"Except as provided in Section 649.3, when a husband or wife dies intestate, leaving community property or quasi-community property, 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 Section 649.2 and 649.4, and no administration is necessary."

And so we anticipate many more hours of committee meetings, drafting and re-drafting of the above-referenced section.

Yours truly,

  
ROBERT J. DELL'ERGO

RJD:cl

cc: Estate Planning and Probate Section