

Memorandum 85-23

Subject: Study L-828 - Transfer Without Probate of Certain Property
Registered by the State

The Commission approved for printing and submission to the 1985 legislative session its Recommendation Relating to Transfer Without Probate of Title to Certain Property Registered by the State. A copy of the recommendation is attached. The proposed legislation has been introduced by Assembly Member McAlister but we do not yet have copies of the printed bill.

This recommendation was distributed for comment to interested persons and organizations. We received only two comments that raised questions concerning the recommendation. These comments are discussed below.

Statement that creditor's claims have been satisfied

The provisions of the Vehicle Code and Health and Safety Code require that the affidavit used to transfer at death of title to a vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, or truck camper include the following statement:

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.

This statement is one required under existing law and is not an additional requirement imposed by the Commission's recommendation.

The general affidavit procedure for personal property (Probate Code Section 630) contains no comparable requirement.

Exhibit 2 (Norma J. Wollesen, Modesto) notes this difference but does not suggest any revision of the recommendation. Exhibit 3 (Elliot D. Pearl, Sacramento) notes the same difference and suggest that the statement concerning payment of creditors be deleted from the affidavit so that the provisions relating to vehicles and the like will be consistent with the general provisions under Section 630. The reason is that payment of creditors "quite often can not be accomplished, at least in the period of time necessary."

The recommendation proposes no change in existing law so far as whether or not a statement concerning payment of creditors is required in the affidavit. The recommendation is supported by everyone who has reviewed it. The staff would be reluctant to introduce the issue of rights of creditors in this recommendation. Moreover, there is often an immediate need to obtain payment or delivery of property under Section 630, but we do not believe that immediate transfer of the record title to the state registered property is often needed. Accordingly, we recommend no change in the recommendation.

Coownership registration

Exhibit 2 (Norma J. Wollesen, Modesto) notes that vessel coownership registration as proposed in the recommendation is not consistent with coownership registration under the Health and Safety Code for mobilehomes, commercial coaches, manufactured homes, and truck campers. This is true. The proposed provision on vessel coownership registration is the same as the provision that applies to vehicles. The Department of Motor Vehicles administers the provisions relating to vehicles and vessels and this is the reason the new provision for vessels conforms to the existing provision for vehicles. The different provision relating to property registered by the Department of Housing and Community Development probably is based in part on the belief that mobilehomes should be protected like real property homes.

To provide uniform provisions covering all types of state registered property (if that were determined to be good policy) would require the review and reregistration of the property now registered to make the necessary changes so that title documents would conform to the uniform provisions. We do not believe that this expense would be justified. We recommend against changing the existing law or the provisions of the recommendation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

APPENDIX XVII
STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Transfer Without Probate of
Certain Property Registered
by the State

November 1984

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

CALIFORNIA LAW REVISION COMMISSION

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November 15, 1984

To: THE HONORABLE GEORGE DEUKMEJIAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

Existing statutory provisions permit transfer at death, without probate, of title to a vehicle, undocumented vessel, manufactured home, mobilehome, commercial coach, or truck camper if the deceased owner leaves no other property requiring probate. The Commission recommends that these provisions be revised to make them uniform and to eliminate uncertainty in their application.

This recommendation is authorized by 1980 Cal. Stats. res. ch. 37.

Respectfully submitted,

DAVID ROSENBERG
Chairperson

RECOMMENDATION

relating to

TRANSFER WITHOUT PROBATE OF CERTAIN PROPERTY REGISTERED BY THE STATE

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 commercial coach,⁵ or truck camper⁶ registered by the state. If the deceased owner leaves no other property requiring probate, the surviving spouse or other near relatives⁷ of the decedent, if otherwise entitled to the property, may have the registration transferred into his or her name by

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, 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 "Truck camper" means a portable unit, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from a truck, and designed for human habitation for recreational or emergency occupancy. See Civil Code § 799.24 and Health & Safety Code § 18013.4.

⁷ 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.

presenting the registering agency with a certificate signed under penalty of perjury.⁸

The statutes governing vehicles and undocumented vessels are not consistent with the statute governing manufactured homes, mobilehomes, commercial coaches, and truck campers.⁹ 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.¹⁰ A vehicle registered under the Vehicle Code, a manufactured home, a mobilehome, a commercial coach, or a truck camper may be transferred by the summary method without regard to its value¹¹ if the decedent leaves no other property requiring probate. But an undocumented vessel may be so transferred only if the total value of the decedent's property in California does not exceed \$60,000, even if the decedent leaves no other property requiring probate.¹²

The Commission recommends legislation to make uniform the various provisions governing transfer of registration of the decedent's title or interest in a vehicle,

⁸ 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.

⁹ Compare Veh. Code §§ 5910 and 9916 with Health & Safety Code § 18102.

¹⁰ In the case of a manufactured home, mobilehome, commercial coach, or truck camper, 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. See note 13, *infra*. The same interpretation would apply to truck campers which are governed by the same statutory provision. See 1984 Cal. Stats. ch. 1527 § 39 (amending Health & Safety Code § 18102).

¹¹ 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). Truck campers were added to the statute in 1984. See 1984 Cal. Stats. ch. 1527, § 39 (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 in 1949. See 1949 Cal. Stats. ch. 1522.

¹² Veh. Code § 9916.

undocumented vessel, manufactured home, mobilehome, commercial coach, or truck camper. The recommended legislation would:

(1) Make clear that a manufactured home, mobilehome, commercial coach, truck camper, 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 by the Department of Housing and Community Development,¹³ and with the general provisions for transfer of the decedent's personal property upon presentation of an affidavit of entitlement.¹⁴

(2) Eliminate the \$60,000 maximum estate value limitation for transfer of registration of the decedent's title or interest in an undocumented vessel registered under the Vehicle Code, making this provision consistent with those applying to vehicles, manufactured homes, mobilehomes, commercial coaches, and truck campers.

(3) Delay the transfer of title until 30 days have elapsed since the decedent's death.¹⁵ This delay will not interfere with the survivor's use of the property, but will allow time for competing claimants, if any, to come forward.

(4) Make other technical changes.¹⁶

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

¹³ Letter from Department of Housing and Community Development to California Law Revision Commission (September 19, 1984).

¹⁴ Prob. Code § 630.

¹⁵ 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 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).

¹⁶ 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.

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:

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

(2) The beneficiary who takes the manufactured home, mobilehome, commercial coach, or truck camper under

the will of the decedent, where the manufactured home, mobilehome, commercial coach, or truck camper 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 the 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 declarant is entitled to the manufactured home, mobilehome, commercial coach, or truck camper either (i) as the surviving heir or heirs named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries 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, commercial coach, or truck camper that is superior to that of the declarant.

(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, commercial coach, or truck camper under the decedent's will (whether or not the beneficiary is related to the decedent) 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).

Probate Code § 630 (amended). Affidavit procedure for disposition of personal property of small estate without probate

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, ~~or~~ registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code, any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code, or any manufactured home, mobilehome, ~~or~~ commercial coach, or truck camper 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 and truck campers 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, mobilehomes, commercial coaches, and truck campers), 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.

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

SEC. 3. Section 5910 of the Vehicle Code is repealed.

~~5910. Upon the death of an owner or legal owner of any vehicles 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, may secure a transfer of registration of the title or interest of the deceased upon presenting to the department 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.

SEC. 4. Section 5910 is added to the Vehicle Code, to read:

5910. (a) If 30 days have elapsed since the death of an owner or legal owner of a vehicle registered under this code, without the decedent leaving other property necessitating probate, and irrespective of the value of the vehicle, the following person may secure 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 decedent upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and registration card, if available.

(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 declarant is entitled to the vehicle either (i) as the surviving heir or heirs named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries 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 declarant.

(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 (whether or not the beneficiary is related to the decedent) 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, commercial coach, or truck camper), 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.

Vehicle Code § 9852.5 (added). Vessel coownership registration

SEC. 5. 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).

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

SEC. 6. Section 9916 of the Vehicle Code is repealed.

9916. Upon 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, may secure a transfer of ownership of the title or interest of the deceased upon presenting to the department 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.

SEC. 7. Section 9916 is added to the Vehicle Code, to read:

9916. (a) If 30 days have elapsed since the death of an owner or legal owner of any vessel numbered

under this division without the decedent leaving other property necessitating probate, 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 decedent upon presenting to the department all of the following:

(1) The appropriate certificate of ownership and certificate of number, if available.

(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 declarant is entitled to the vessel either (i) as the surviving heir or heirs named in Section

630 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries 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 declarant.

(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 (whether or not the beneficiary is related to the decedent) 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, commercial coach, or truck camper).

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December 17, 1984

FILE NO.

Mr. John H. DeMouilly, Executive Secretary
CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

Dear Mr. DeMouilly:

This letter contains the comments of the Probate and Estate Planning Section of the Kern County Bar Association on the five specific recommendations you sent to me. Please add the following persons to your mailing list who would like to review and comment on future recommendations:

Thomas A. Tutton, Esq.
DEADRICH, BATES & TUTTON
1122 Truxtun Avenue
Bakersfield, CA 93301

James Hulsy, Esq.
HULSY & HULSY LAW OFFICES
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Bakersfield, CA 93301

Vernon Kalshan, Esq.
651 "H" Street
Bakersfield, CA 93301

Barry L. McCown, Esq.
5100 California Avenue
Bakersfield, CA 93309

The Probate and Estate Planning Section of the Kern County Bar Association is willing to review and comment on preliminary drafts of the new Probate Code and would like to receive copies of the materials the Commission distributes. We request that the materials be sent out more than one month before the comment period ends, if possible, to give us more time to study the recommendations.

Our committee which reviewed the five recommendations had no objection to the recommendations on transfer without probate of title to certain property registered by the state and effect of adoption or out of wedlock birth on rights at death. We have specific comments on the other three recommendations.

3. Inconsistency of coownership registration

Vessel coownership registration under Vehicle Code Section 9852.5 and coownership registration under Health and Safety Code Section 18080 for mobilehomes and commercial coaches are not consistent, and it would be helpful to attorneys in advising clients if all vehicle, mobile home, manufactured home, coach, and vessel registration were consistent as to method of creation and disposition.

Under Health and Safety Code Section 18080, the signature of each joint tenant or survivors, as the case may be, are required to transfer or encumber the title to a mobilehome or commercial coach while under the proposed vessel coownership registration each coowner, where a joint tenancy ownership has been established, shall be deemed to have granted to the other coowners the absolute right to dispose of the title and interest in the vessel. Under Health and Safety Code Section 18080, each tenant in common may transfer, but may not encumber, his or her interest in the mobilehome or commercial coach without the signature of the other tenant or tenants in common while under the proposed vessel coownership registration the signature of each coowner is required to transfer title to the vessel, except where title is in joint tenancy.

Also, the proposed vessel coownership registration specifies that the use of the word "or" when registered in the names of two or more persons creates a joint tenancy while Health & Safety Code Section 18080 contains no such specification.

Very truly yours,

A handwritten signature in cursive script, reading "Norma J. Wollesen".

Norma J. Wollesen

njw

GRIFFIN, CONWAY & JONES

JOHN E. GRIFFIN
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December 15, 1984

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Attention: Mr. John H. DeMouilly
Executive Secretary

Gentlemen:

I am writing in response to the materials forwarded to me for review with your letter of November 14, 1984. Since no formal committee within our Stanislaus County Bar Association was formed to review the materials as a group and to comment as a committee, I am making my comments as an interested individual practicing in the probate and estate planning area of law. The following are my comments:

2. Transfer without probate of title to certain property registered by the state

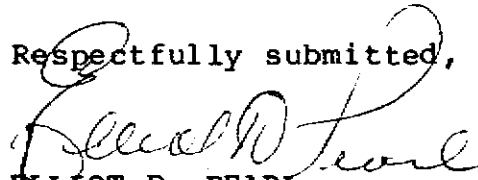
The amendments to both Health & Safety Code Section 18103 and Vehicle Code Section 9916 require that the person seeking to secure transfer of ownership of the items specified respectively in those sections to provide to the department a certificate under penalty of perjury containing a statement that 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.

There seems to be an inconsistency in the provisions of Health & Safety Code Section 18103 and Vehicle Code Section 9916 requiring the above certification as to the payment of debts and Probate Code Section 630 which does not require a person to certify that there are no creditors of the decedent, etc., when seeking to have personal property transferred.

Under Health & Safety Code Section 18103 and Vehicle Code Section 9916 a person seeking to have transferred any of the items enumerated therein would have to satisfy debts of the decedent, if any, before obtaining title, whereas a person seeking to have transferred any personal property under Probate Code Section 630 would not have to satisfy the decedent's debts.

Thank you for having allowed us to review these very important proposals; if further review is desirable or if the commission would like me to appear or consult directly with it, I would be happy to do so.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Elliot D. Pearl".

ELLIOT D. PEARL

EDP:ap

cc: Benjamin Frantz

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December 6, 1984

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303

Attn: John H. DeMouilly

Dear Mr. DeMouilly:

I am pleased to have been nominated by Mr. Frantz to serve on the committee and to review the tentative proposals of the Law Revision Commission relating to probate law. I have reviewed the same and have the following general comments which perhaps will be of some assistance. Should specific recommendations be desired, I will be happy to meet with other committee members or with the Commission itself to discuss these.

1. The recommendations concerning transfer without probate certainly seem warranted; however, the one comment which I would make is that the procedure for "setting aside" the vehicles, mobile homes, etc. should really be identical as for a Probate Code 630 procedure. As I note, there is one glaring difference and that is, under Section 630, the declarant is not required to state that there are no creditors, or if there are creditors that they have been paid in full or their claim is otherwise discharged. Section 630, in effect, makes the recipient of the items responsible for the obligations to the creditors to the extent that they have received the property of the decedent. The Vehicle Code Sections, on the other hand, require that the heirs or beneficiaries statement contain language that there are no creditors, etc. This quite often can not be accomplished, at least in the period of time necessary, and it is suggested, instead of such a declaration, that the statute provide that the recipient of the vehicle or other item take the same subject to any obligations of the decedent, to the extent of the property received, similar to Section 630. In otherwords, these should be, at least in my opinion, virtually identical provisions.