

#L-1025

3/27/85

Revised First Supplement to Memorandum 85-34

Subject: Study L-1025 - Probate Code (Presentation of Claims--comments
on staff draft)

This memorandum has attached the comments of the following groups
concerning the staff draft of the presentation of claims provisions:

Exhibit 1--Executive Committee of the Probate and Trust Law Section
of the Los Angeles County Bar Association

Exhibit 2--Estate Planning, Trust and Probate Law Section of the
State Bar of California

Exhibit 3--Executive Committee of the Estate Planning, Trust and
Probate Law Section of the California State Bar

Exhibit 4--Beverly Hills Bar Association, Probate, Trust and Estate
Planning Section, Legislative Committee

At the Commission meeting we will orally raise the points made in these
comments.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

**Los Angeles County
Bar Association**

Probate and Trust Law Section

617 South Olive Street
Los Angeles, California 90014
213 627-2727

Mailing address:
P.O. Box 55020
Los Angeles, California 90055



March 11, 1985

California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Re: March Meeting

Dear Commissioners:

The Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association submits the following comments on various studies which are scheduled for discussion at your meeting, March 21-22, 1985.

Study L-1025 - Probate Code (Presentation of claims)
(Memorandum 85-34):

Section 7901:

Staff proposes that in addition to publication of notice to creditors the personal representative shall serve notice on each creditor whose name and address is known or is reasonably ascertainable by the personal representative. This would add a substantial burden to estate administration. It also raises questions as to the rights of the creditor who has failed to receive notice in a timely manner. For that matter, within what time period must notice be given and how long after notice is received does the creditor have to act. Is notice given within thirty days of the close of the four month period from issuance of letters sufficient notice? We believe further analysis of this proposed addition to the

Code is warranted both in terms of basic due process questions raised by the staff and Chuck Collier and as to the effect this requirement would have on other sections of the Code.

Section 7912:

Note typographical error in second line of subpart (b). The second word should be "or".

Section 7923:

The section reference in subpart (a) should be §7920.

We trust that these comments will be useful in your work. If you require clarification on any points, please contact Richard L. Stack, Darling, Hall & Rae, 606 South Olive Street, Suite 1900, Los Angeles, California 90014; telephone (213) 627-8104.

Sincerely,

EXECUTIVE COMMITTEE, PROBATE
AND TRUST LAW SECTION

By: 
Richard L. Stack

RLS:lgc

COOLEY, GODWARD, CASTRO, HUDDLESON & TATUM

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March 11, 1985

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Room D-2
Palo Alto, CA 94306

Dear Mr. Sterling:

This letter sets forth the present positions of the Estate Planning, Trust and Probate Law Section of the State Bar of California (hereinafter "Section") respecting Memorandum 85-34. The Section through its Executive Committee, and Study Committees, is continuing its study and evaluation of Memo 85-34, and all other memoranda of the California Law Revision Commission (herein "CLRC"). Hence it is possible that any position herein expressed may subsequently be modified. If that should occur, we will promptly advise you.

I. General Comments

The Section has some general comments which apply to Memorandum 85-34 and to most other memoranda.

A. Rearrangement of Probate Code Sections

Memorandum 85-34 effects a substantial rearrangement of the Probate Code Sections pertaining to creditors' claims. This is accompanied by language, and style, changes.

While the Section has no objection to a rearrangement, in the interest of clarity, we do see problems for the Probate Courts and the practicing attorneys when that rearrangement is accompanied by language, and style, changes:

1. There is a large body of decisional law, and local rules, predicated upon the existing Probate Code. When rearrangement is accompanied by language, and style, changes, both the Courts and the practicing attorneys will believe there has been a change in the substantive law even though CLRC did not intend any change thereby possibly making some court decision unintentionally inapplicable.

2. In some instances, the language and style changes, which do not track the existing Probate Code seem less clear and certain than the existing Probate Code on the same subject.

II. Specific Comments

A. 7901(b)

The Section opposes 7901(b).

We are, indeed, giving careful study to both the cases cited in Memorandum 85-34:

1. Mennonite Board of Missions v. Adams
(1983) 103 S.Ct. 2706
2. Continental Insurance Co. v. Moseley
(1984) 683 P. 2d 20

B. 7911

The Section supports the need of an affidavit even with respect to the "routine claims" mentioned in Memorandum 85-34. It does not put an undue burden on the claimant and gives considerable protection to the executor who is not closely involved in the decedent's day-to-day affairs.

C. 7923(a)(1)

The Section suggests changing 7923(a)(1) to read substantially:

"(1) The claimant, who did not do business in California, was out of State and did not receive notice".

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There is no perceived reason to favor a creditor who does business in California simply because he is incorporated in, or has his principal place of business in, another state.

D. 7962(b)

Section approves 7962(b).

E. 7967

Regarding the second paragraph of Memorandum 85-34, the Section favors giving the Probate Court jurisdiction to try the action brought on a rejected claim with the proviso, however, that there is no civil action pending on the rejected claim.

F. 7968

The Section opposes summary procedure for referee to determine a disputed claim by agreement of the parties, unless the determination is binding on the parties.

The Section favors binding arbitration under CCP 1280, et seq. The Section disfavors nonbinding arbitration.

Thanks for your good work!

Please let me know if the above Section positions are unclear.

Sincerely,

Clare H. Springs
Harley Spitler

HJS:wp

EXHIBIT 3

**ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA**

Chair
KENNETH M. KLUG, Fresno
Vice-Chair
JAMES A. WILLETT, Sacramento

Advisors
COLLEEN M. CLAIRE, Newport Beach
CHARLES A. COLLIER, JR., Los Angeles
JAMES D. DEVINE, Monterey
K. BRUCE FRIEDMAN, San Francisco
JAMES R. GOODWIN, San Diego
JOHN L. McDONNELL, JR., Oakland
WILLIAM H. PLAGEMAN, JR., Oakland
JAMES F. ROGERS, Los Angeles
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March 12, 1985

Executive Committee
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JOHN S. HARTWELL, Livermore
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CLARE H. SPRINGS, San Francisco
H. NEAL WELLS, III, Costa Mesa
JAMES A. WILLETT, Sacramento

Mr. John H. DeMouilly
California Law Revision Commission
4000 Middlefield Road, Ste. D-2
Palo Alto, California 94303

Re: Memos 85-31, 85-34, 85-35, 85-36

Dear John:

The Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar, has considered the following memoranda. Our comments are set forth as follows:

3. Memorandum 85-34 - Presentation of Claims.

A. Section 7901 - Notice to Creditors. The Executive Committee is very concerned about the Mennonite Board of Missions vs. Adams case and the Continental Insurance Company vs. Mosley case. We have appointed a special Subcommittee to look into the due process issue. The Executive Committee currently is very strongly opposed to adding Subdivision (b) to the 7901 to require actual notice to known creditors. We feel this would jeopardize the In Rem nature of probate proceedings and would cause undue problems. We will have more thought and input on this matter at such time as our Subcommittee reports.

B. Section 7911 - Documentary Support of Claim. The Executive Committee supports the requirement of an affidavit to support a creditor's claim. This procedure has been in place for many years and works fine. To allow otherwise may result in fraudulent claims.

C. Section 7923 - Late Claims. The Executive Committee supports the retention of the out-of-state creditors late claim

procedures but would have the section amended to exclude such late claims is if the out-of-state creditor is doing business in the State of California.

D. Section 7934 - Claim Covered by Insurance. The Executive Committee does not approve the change to no longer require prior Court approval to commence an action within the policy limits by serving the insurer. The reason for this is that there may be deductibles in the insurance policy, the cost of defense may not be covered and other matters should be looked into before the plaintiff is allowed to proceed directly against the insurance carrier. The personal representative of the estate may have a duty to defend even though there is insurance coverage and if he fails to respond relying on insurance coverage and finds out later that there is none, there could be real liability for the personal representative.

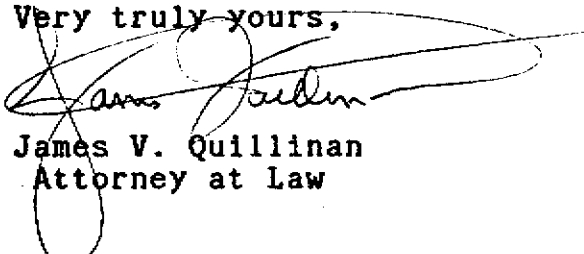
E. Section 7962 - Effect of Statute of Limitations. The Executive Committee approves new Section 7962.

F. Section 79.65 - Failure of Personal Representative to Report Act. The change in the time period from 10 to 30 days is approved by the Executive Committee.

G. Section 7967 - Action on Rejected Claim. The Executive Committee supports the ability of the Probate Court to hear and determine claims so long as no other action is pending between or among the parties. The concept of a statutory priority may also provide relief in this area.

H. Section 7968 - Reference to Determine Disputed Claim. The Executive Committee reviewed this area extensively and is of the same opinion as Commissioner Stodden that Section 7968(a) should be deleted. We support the inclusion of Section 7969, so long as it is binding arbitration.

Very truly yours,



James V. Quillinan
Attorney at Law

JVQ/agc

cc: Ken Klug
Chuck Collier
Ted Cranston

Exhibit 4

Phyllis Cordoza
Independent Legal Assistant

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March 18, 1985

EXPRESS MAIL

Nathaniel Sterling,
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Probate Code Division III, Chapter 5, Creditors' Claims
(Sections 7900ff)

Dear Mr. Sterling,

I am an associate member of the Beverly Hills Bar Association,
Probate, Trust and Estate Planning Section, Legislative Committee.

After receiving your Preliminary draft (memorandum 85-xx dated February 4, 1985 and your letter of February 6th with comments, our Legislative Committee set about to make some suggestions for major procedural changes to Probate Code Sections 700 to 738. At that time, your number system was in the 7800 series. After we did the majority of our work, we then received (just before our March 13th meeting) your Memorandum 85-34 for Study L-1025 dated February 25, 1985, bearing the 7900 number series. However, seeing that your later Memorandum 85-34 merely consolidated various comments contained in your February 6th letter, we left some of the changed pages as is.

Thus, we enclose the following:

1. Copy of the 2-4-85 draft (and some 2-25-85 pages) with our suggested changes interlineated in handwriting or typing.
2. Copy of two new proposed forms:
Creditor's Claim (with proof of service)
Allowance/rejection of Creditor's Claim (with proof of service)

Realizing that such major revisions cannot be digested by your staff and the Commission in time for the March 21-23 meeting, we respectfully suggest that you postpone consideration of this Chapter until you have a chance to review the enclosed suggested changes.

Sincerely,

Phyllis Cordoza
PHYLLIS CARDOZA
PC:pk

*P.S. Please call me
upon receipt*

cc: Harley J. Spitler, Esq. (with enclosure)
State Bar Liaison with CLRC on Creditor's Claims
Kenneth A. Feinfeld Esq., BHBA Probate Section Chair
Melinda J. Toohey, Esq., BHBA Probate Section, Leg. Comm. Chair

CHAPTER 5. CREDITORS' CLAIMS

Article 1. General Provisions§ 7800. "Claim" defined

7800. (a) As used in this division, "claim" includes:

(1) Liability of the decedent whether arising in contract, ~~in~~ tort, or otherwise, and shall also include funeral expenses.

~~-(2) Liability of the estate that arises at or after the death of the decedent, other than expenses of administration.~~

~~-(3) Liability for taxes, other than property taxes, special assessments, assessments, gift taxes, and estate taxes.~~

(b) The term does not include demands and disputes regarding title of a decedent to specific assets alleged to be included in the estate.

Comment. Section 7800 is new. It is drawn from Section 1-201(4) of the Uniform Probate Code. While the term "claim" excludes administration expenses such as personal representative and attorney fees, it includes other post mortem debts such as funeral expenses. This continues a provision of former Section 707. The provisions relating to tax liability continue the substance of former Section 707.5(c). With regard to title to property, see Section [851.5].

~~including funeral expenses;~~

CROSS REFERENCES

Title to property § [851.5]

BHBA COMMENT:

No need to give examples; former (1) covers it all.

§ 7801. Notice to creditors

7801. (a) Publication ^{death and} or posting of the notice of ~~hearing~~ of the petition to administer the decedent's estate pursuant to Chapter 2 (commencing with Section 7230) of Part 2 constitutes notice to the creditors of the decedent of the requirements of this chapter.

~~[(b) In addition to the notice provided in subdivision (a), the personal representative shall serve notice on each creditor whose name and address is known or is reasonably ascertainable by the personal representative.]~~

ADD S
TO
LITIGATION

Comment. Subdivision (a) of Section 7801 continues the substance of the first portion of former Section 700. [Subdivision (b) is new.]

But how and when should notice be given?

(b) In addition to the notice provided in subdivision (a), the personal representative shall serve any notices required in Sections 7854.

GR

CROSS REFERENCES

Notice to Public Entities § 7851 and § 7854

BHBA COMMENT: Perhaps there could be a box on the Petition for Probate Judicial Council form for Notice to the Dept. of Health Services, eg:

☐ Department of Health Services
(If checked, attach death certificate to Notice of Death going to DHS)

Article 2. Making of Claims§ 7810. How claim is made

7810. ~~(a) A claim is made by filing the claim in the office of the clerk or by presenting the claim to the personal representative.~~

(a) A claim may be made by the claimant or by a person in behalf of the claimant, including ^(A)

Comment. Subdivision (a) of Section 7810 continues the substance of a portion of former Section 700(a); it is intended to simplify drafting. Subdivision (b) generalizes a provision of former Section 704.2; a person acting in behalf of the claimant may include ^(A) the personal repre-

~~sentative or the guardian or conservator of the estate of the claimant, or~~
and attorney for the claimant.

CROSS-REFERENCES

Payment of debts without claims §[929]

Definition

Clerk § 29

(b) Claims against the decedent may be made on the form approved by the Judicial Council of California, and shall contain the information and the documentary support set forth in Section 7811.

(c) A copy of the claim shall be served upon the personal representative or his or her attorney within the time prescribed in Sections 7820-7823.

(d) The original claim, with proof of service by mail upon the personal representative, or his or her attorney, shall be filed with the Court.

BHBA COMMENT: A dual system of filing or presenting claims is:

1. Unnecessarily confusing;
2. A burden on the County Clerk;
 (In L. A. County, 200-300 claims a month are mailed to personal reps. Many are returned because of changes of address which the claimant can ascertain more easily than the County Clerk's staff.
3. Unnecessarily different from all other probate notice procedures.

§ 7811. Documentary support of claim

7811. (a) A claim shall be supported by the affidavit ^{or declaration} of the claimant or a person in behalf of the claimant stating, to the knowledge of the affiant ^{or declarant}:

(1) If the claim is due, the amount is justly due, no payments have been made on the claim that are not credited, and there are no offsets to the claim.

(2) If the claim is not due, or is contingent, the particulars of the claim.

(3) If the affidavit ^{or declaration} is made by a person other than the claimant, the reason therefor.

(b) The personal representative may require satisfactory vouchers or proof to be produced in support of the claim. ~~If the claimant includes with the claim an original voucher, the claimant may withdraw~~ ^{attach} a copy of the voucher after a copy is attached to the claim.

Comment. Section 7811 continues the substance of former Section 705.

BHBA NOTE: Claimant should have the right to keep the original voucher in case of trial on the claim.

§ 7812. Claim founded upon written instrument

7812. (a) If a claim is founded on a written instrument, the original need not be included with the claim, but a copy of the original with all endorsements shall be attached to the claim. The original instrument shall be exhibited to the personal representative or court upon demand unless it is lost or destroyed, in which case its loss or destruction shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed or trust, or other lien that is recorded in the office of the recorder of the county in which the security is situated, it shall be sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

Comment. Section 7812 continues the substance of former Section 706.

CROSS-REFERENCES

Actions at chambers § 7123

§ 7813. Procedure when claim filed

~~7813. (a) A claim filed with the clerk shall be made in duplicate. The clerk shall immediately mail or deliver to the personal representative, when appointed, or the attorney of the personal representative, one of the duplicates of the claim.~~

NOT NECESSARY
 [X] The clerk shall enter in the register every claim filed, giving the name of the claimant, amount of the claim, rate of interest if any, and date of filing.]

Comment. Subdivision (a) of Section 7813 continues the substance of the first two sentences of former Section 710. Subdivision (b) continues the substance of the last sentence of former Section 707(a).

CROSS-REFERENCES

Definition

Clerk § 29

Procedure by Court upon approval or rejection § 7861

Note. The need for subdivision (b) is under review.

BHBA COMMENT:

We agree with the Query in Memorandum 85-34.
 7813(b) can be eliminated, but 7813(a)

In addition, our revision of §7810 takes §7813(a) out also.

THUS, THIS ENTIRE §7813 SHOULD BE ELIMINATED.

§ 7814. Claim presented by notary

7814. If a claim is presented by a notary, the certificate of the notary, under seal, is prima facie evidence of the presentation and the date thereof.

Comment. Section 7814 continues the substance of the second sentence of former Section 717.

Note. The purpose of this provision is under review.

AMEN!

BUT

1) ASK ANY NOTARY IF
HE OR SHE KNOWS
HOW TO PRESENT
A CLAIM.

2) BESIDES, THIS IS ANOTHER
UNNECESSARY VARIATION ON
HOW TO MAKE A CLAIM. SEE
OUR NOTE TO § 7810.

Query added

§ 7815. Where personal representative is creditor

7815. (a) If the personal representative is a creditor of the decedent, the personal representative shall file the claim with the clerk. The clerk shall present the claim to the court for approval or rejection.

(b) If the court allows the claim, the claim shall be paid as other claims in due course of administration.

(c) If the court rejects the claim, the personal representative may bring an action against the estate. Summons shall be served upon the judge, who shall appoint an attorney, at the expense of the estate, to defend the action. If the personal representative fails to recover, the personal representative shall pay all costs, including reasonable attorney's fees, to be fixed by the court.

Comment. Section 7802 continues the substance of former Section 703.

CROSS-REFERENCES

Definition

Clerk § 29

Actions at chambers § 7123

MAR 13 1985

§ 7816. Where judge is creditor

7816. (a) If the judge before whom administration of the estate is pending is a creditor of the decedent, the judge shall make the claim in the same manner as other creditors.

(b) If the personal representative allows the claim, the judge shall designate, in writing, another judge of the court of the same or an adjoining county who, upon presentation of the claim, is vested with power to approve or reject it.

(c) If the personal representative rejects the claim, or if the judge designated pursuant to subdivision (b) rejects the claim, the claimant has the same right to bring an action for its recovery as other persons whose claims are rejected.

Comment. Section 7816 continues the substance of former Section 704.

CROSS REFERENCE

Disqualification of judge § 303

Article 3. Time for Making Claims§ 7820. Four-month claim period

7820. (a) Except as otherwise provided by statute, a claim shall be made within four months after letters are issued to a general personal representative.

(b) For the purpose of this section, if letters are issued by more than one court or if subsequent letters are issued by the same court, the four-month period commences upon the first issuance of letters to a general personal representative.

Comment. Section 7820 continues the substance of the last portion of subdivision (a) and subdivision (c) of former Section 700. In the case of a special administrator granted the powers of a general personal representative, the ~~non~~claim period commences to run upon first issuance of letters reciting the general powers of the special administrator.

CROSS-REFERENCES

Definition

General personal representative § 59

NOTE

WHY DOESN'T THE PERIOD COMMENCE TO RUN WITH APPOINTMENT OF A SPECIAL ADMINISTRATOR WITHOUT GENERAL POWERS? EVEN THOUGH THAT SPEC. ADM. CANNOT APPROVE OR REJECT CLAIMS (?), HE/SHE PASSES ALL ESTATE INFORMATION ON TO GENERAL PERSONAL REPRESENTATIVE.

AN EXCEPTION COULD BE MADE TO THE "DEEMED REJECTED" SECTION FOR THIS...

§ 7821. Time not extended by vacancy in office

7821. A vacancy in the office of the personal representative before expiration of the time for making a claim does not extend the time.

Comment. Section 7821 continues the substance of former Section 700(b). A vacancy occurs where the personal representative resigns, dies, or is removed from office. Section 7390.

§ 7822. Where personal representative acts on claim after expiration of time

7822. A claim that is made before expiration of the time for making the claim is timely made even though acted upon by the personal representative or by the court after expiration of the time.

Comment. Section 7822 continues the substance of the last sentence of former Section 712.

§ 7923. Late claims

7923. (a) A claim may be made at any time within one year after the time prescribed in Section 7820 and before petition for final distribution has been filed if it is made to appear by affidavit to the satisfaction of the court that ~~any of the following conditions is satisfied:~~

(1) ~~The claimant was out of the state and did not receive notice.~~

(2) ~~The claimant in good faith filed a claim in another proceeding for the same decedent which is not consolidated with the present proceeding, and in which letters are not issued.~~

(3) (b) Neither the making of a claim pursuant to this section, nor its later establishment in whole or in part, shall make property distributed pursuant to court order or any payments properly made before making of the claim subject to the claim.]

Comment. Section 7923 continues the substance of the second and third sentences of former Section 707(a).

Note. Subdivision (b) is subject to further review in connection with other code provisions.

Query. Section 707(a) permits the late filing of a claim where the claimant "had in good faith filed a claim in another proceeding for the same decedent which has not been consolidated with the present proceeding, and in which letters had not been issued." To what does this provision refer, and does it have any application other than perhaps as special legislation to take care of one case that arose sometime in the past?

BHBA COMMENTS:

1. We are undecided on when a claimant may have more than 4 months to make a claim. However, merely being out of state is not sufficient reason in this day of electronic communications and nationwide creditors' having offices or doing business in California. [re: 7823(a)(1)]
2. Regarding §7823(a)(2), we agree with the LRC staff that this subsection does not have any wide application.
3. Regarding §7823(b), see insert (A)

(A) With the exception of preliminary distributions made pursuant to Section [1000], and before the period for filing claims has expired,

BHBA NEW SUGGESTED SECTION

§7824. Amendments to Claim

Regardless of any defects in the form of a timely filed claim, amendments may be made after the deadline for submitting the claim.

BHBA COMMENTS:

See Nathanson v. Superior Court, 12 C.3d 355, 366-368

We suggest a review of other case law to be codified here, on the subjects, for example, of:

1. Can only the Judicial Council form be used?
2. Can the claim be verified later?
3. Can the amount be changed?
4. Can supporting documents be added later?

Article 4. Claims in Civil Actions§ 7830. Claim prerequisite to action

Section 7831 of

7830. Except as otherwise provided in this article, no holder of a claim ~~{against an estate}~~ shall maintain an action on the claim unless the claim is first made as provided in this chapter.

Comment. Section 7830 continues the substance of former Section 716(a).

BHBA COMMENTS:

We agree with the LRC staff's "Query" in Memo 85-34 that there is no claim against an "estate". The claim is for a debt of the decedent. "Claims" against the estate are in reality costs of expenses of or during administration of the estate, and just do not require claims.

§ 7831. Enforcement of security interest

7831. (a) The holder of a mortgage or lien, including but not limited to a judgment lien, may bring an action to enforce the lien against the property subject to the lien, whether or not a claim is first made, if (the holder of the lien in the complaint) expressly waives all recourse against any other property of the estate.

(b) Notwithstanding subdivision (a), no attorney's fees shall be recovered in the action unless a claim is first made as provided in this chapter.

Comment. Section 7831 continues the substance of former Section 716(b)-(c).

BHBA COMMENTS referring to Subsection (b):

If the security instrument provides for attorney's fees, why is a claim necessary?

Or should a claim be necessary only if judicial proceedings or resorted to on rejection of the claim by the personal representative

What about other enforcement costs?

§ 7832. Claim involving pending action.

7832. (a) If an action is pending against the decedent at the time of death, the plaintiff shall make the claim in the same manner as if no action were pending. No recovery shall be had against the decedent's estate in the action except upon proof that the claim was made as provided in this chapter.

PERHAPS
INSTEAD
NOTICE OF
PENDING
OF ACTION
as in present
§ 714?

(b) Notwithstanding subdivision (a), if the claim is not made within the time for making a claim, the court may thereafter allow the claim to be filed, upon the claimant's verified petition and notice of hearing given pursuant to Section [1200.5], if the court finds that the claim was not timely made because neither the claimant nor the claimant's attorney had actual knowledge of the decedent's death at least 15 days before expiration of the time for making a claim. No relief shall be granted unless the petition is filed within a reasonable time after discovery of decedent's death, and in any event within one year after expiration of the time for making a claim and before petition for final distribution has been filed. Allowance of the claim shall be on such terms as may be just and equitable, and shall be subject to the following conditions:

[(1) Any property distributed pursuant to court order or any payment properly made before notice of the petition ^{is served} is not subject to the claim. X

(2) If, at the time of filing the petition, assets of the estate have been paid to general creditors or distributed by decree of preliminary distribution to heirs or devisees (in either case after expiration of the time for making a claim)[?], and it appears that the filing and later establishment of the claim, in the circumstances, would cause or tend to cause unequal treatment between heirs, devisees, or creditors, then permission to file the claim shall be denied.]

(C) COPY LANGUAGE FROM NEW § 7834 (b) 3 (see former § 709.1)

Comment. Section 7832 continues the substance of portions of former Section 709.

CROSS-REFERENCES

Definition

Devisee § 32

Note. Subdivision (b)(1) and (2) are subject to further review in connection with other code provisions.

§ 7833. Claim for injury or death not involving pending action

7833. (a) If a claim for damages for injuries to, or death of, a person is not made within the time for making a claim, and no action is pending against the decedent at the time of death, the court shall permit the filing of the claim upon application of the claimant made not later than one year after accrual of the claimant's cause of action, and upon such notice and hearing, if any, as the court may order. The court shall impose reasonable conditions upon the filing of the claim to avoid unequal treatment between the heirs, devisees, or creditors of the estate. The court shall, if required, appoint or reappoint a personal representative.

[(b) Neither the filing of a claim pursuant to this section nor its later establishment, in whole or in part, shall make property distributed pursuant to court order or any payments properly made before notice of the application subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.]

[(c) This section is not applicable to claims of public entities under Section 7851.]

Comment. Section 7833 continues the substance of former Section 720.

CROSS-REFERENCES

Definition

Devisees § 34

Note. Interrelation of this section with CCP § 353 is under study. Subdivision (b) is subject to further review in connection with other code provisions. Whether subdivision (c) is meaningful is under study.

NOTE Why dual section if action pending or not?
CERTAINLY A CLAIM CAN BE MADE IN A SIMILAR MANNER AS CLAIMS MADE TO A PUBLIC ENTITY FOR INJURY, WITH LAWSUIT LATER WITHIN STATUTORY PERIOD

Query -
does this include
libel, slander, etc
Injury should be
defined

§ 7834. Claim covered by insurance

7834. (a) Notwithstanding any other provision of law and without prior court approval, the making of a claim shall not be required and a civil action commenced before or after the death of the decedent may be maintained by a claimant to establish, to the limits of the insurance protection only, a liability of the decedent for which the decedent was protected by liability insurance.

(b) The action by the claimant shall name as the defendant "Estate of (name of decedent), Deceased." Summons shall be served upon the insurer. Further proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner and have the same effect as if the action were against the personal representative. For good cause, the court in which the civil action is pending, upon motion of an interested person or upon its own motion, may order the appointment and substitution of a personal representative as the defendant.

(c) The insurer may deny or otherwise contest its liability by cross-complaint in the action or by an independent action against the claimant, but the judgment on the cross-complaint or in the independent action shall not adjudicate rights by or against the estate.

(e) A judgment in favor of claimant in an action pursuant to this section shall be enforceable only from the insurance protection and shall not create a lien upon any property of the estate.

(f) The remedies of this section are cumulative, and may be pursued concurrently with other remedies.

Comment. Section 7834 continues the substance of former Sections 707(b), 709.1, and 721, and a portion of former Section 709, with the following changes:

(1) The provisions are applied uniformly to actions pending at the death of the decedent and actions commenced after the decedent's death. GOOD!

(2) Court approval is not required before the plaintiff may commence an action against the estate.

(3) The insurer need not have accepted the defense of the cause and made an appearance in a pending action.

(4) The estate of the decedent need not otherwise qualify for Section [630] treatment.

Section 7834 applies in any case where there is a claim for damages for which the decedent was insured, whether for injury to or death of a person caused by the wrongful act or neglect of the decedent, or otherwise. This section applies where the amount of damages sought in the action does not exceed the maximum amount of the insurance or where recovery in excess of the maximum amount is waived. If the amount of damages sought exceeds the insurance policy limits, a claim is necessary with respect to the amount in excess.

Nothing in Section 7834 affects any applicable statutes of limitation relating to the action. Cf. Code Civ. Proc. § 353.

Note. The interrelation of this provision with CCP § 385(b) (pending proceedings) is under review.

NOTE: DOES THIS § APPLY TO PROPERTY
DAMAGE CLAIMS?

Article 5. Claims by Surviving Spouse§ 7840. Claim by surviving spouse for payment of debts of decedent

7840. (a) The surviving spouse may make a claim for payment of the ^a debts of the deceased spouse to the extent the surviving spouse is personally liable for the debts pursuant to Section [649.4]. The claim shall be made before the filing of a petition for final distribution.

(b) The claim shall include all of the following:

(1) The reason why the debts are not barred by [subdivision (d) of Section 649.4].

(2) A statement whether the debts remain unpaid or have been paid by the surviving spouse.

(3) 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 that is exempt from enforcement of a money judgment.

Comment. Section 7840 continues the substance of former Section 704.2.

Note. Subdivision (b)(3) will be reviewed in connection with Section 980.

§ 7841. Claim by surviving spouse for payment of debts of surviving spouse

7841. (a) The surviving spouse may make a claim for the payment of the debts of the surviving spouse for which property administered in the estate is liable. The claim shall be made before the filing of a petition for final distribution.

(b) The claim shall include all of the following:

(1) A statement whether the debts remain unpaid or have been paid by the surviving spouse.

(2) 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 that is exempt from enforcement of a money judgment.

Comment. Section 7841 continues the substance of former Section 704.4 but broadens it consistent with general principles of liability of marital property for debts. See Civil Code §§ 5120.010-5122.

Note. Subdivision (b)(2) will be reviewed in connection with Section 980.

§ 7842. Treatment of claim of surviving spouse

7842. (a) A claim of the surviving spouse made pursuant to this article shall be allowed in the proportion allocated to the estate pursuant to Section [980].

(b) The claim may be discharged by any of the following means:

(1) Payment to the surviving spouse.

(2) Payment to the creditors of the surviving spouse or deceased spouse as identified in the claim.

(3) A credit allowed the spouse in the order allocating debts issued pursuant to Section [980].

Comment. Section 7842 continues the substance of former Section 713.5.

Article 6. Claims by Public Entities§ 7850. Claim by public entity required

7850. (a) Except as otherwise provided in this article, ^(A)a claim by a public entity shall be made within the time prescribed in this chapter. Any claim not so made is barred forever, including any lien imposed for the claim.

(b) As used in this section, "public entity" has the meaning prescribed in Section 811.2 of the Government Code.

Comment. Section 7850 continues the substance of subdivision (a) of former Section 707.5. See Section 7800 ("claim" defined).

BHBA ADDITION:

(A)

and except for obligations to the United States Government,

§ 7851. Claims governed by other statutes

7851. (a) A claim arising under a law or code listed in subdivision (b) is barred only after written request to the agency and expiration of the period provided for in the applicable statute. If no written request is made the claim is barred at the time otherwise provided in the law or code.

(b)	Law or Code	Applicable Statute
	Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
	Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
	Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
	Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
	Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
	Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
	Welfare and Institutions Code	Section 7277.1 of the Welfare and Institutions Code

Comment. Section 7851 continues the substance of former Section 707.5(b).

§ 7852. Limitation on application of article

7852. This article does not apply to liability for the restitution of amounts illegally acquired through the means of any fraudulent, false, or incorrect claim or representation, or any forged or unauthorized endorsement.

Comment. Section 7852 continues the substance of former Section 707.5(e).

§ 7853. Priority of claims not affected by article

7853. Except as provided in Section 7854, nothing in this article shall be construed to affect the order of priority of claims provided for under other provisions of law.

Comment. Section 7853 continues the substance of former Section 707.5(d).

§ 7854. Claim by Director of Health Services

7854. If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, the heirs, devisees, personal representative, or the persons in possession of any property of the decedent shall give the Director of Health Services notice of the death no later than 90 days after the date of death. The notice shall be mailed addressed to the director at the Sacramento office of the director.

(b) A notice given pursuant to this section shall include a copy of the decedent's death certificate.

(c) The director has four months after notice is given pursuant to this section in which to make a claim. If assets of the estate have been distributed, the director is entitled to a claim against the distributees to the full extent of the director's claim, or each distributee's share of the distributed assets, whichever is less. The director's entitlement against distributees shall include interest at a rate of interest equal to that earned in the Pooled Money Investment Fund from the date of distribution or the date of making the claim by the director, whichever is later, plus other accruing costs as in the case of other executions.

(d) Failure to comply with the provisions of this section does not affect the validity of any proceeding under this division.

Comment. Section 7854 continues the substance of former Section 700.1.

CROSS-REFERENCES

Mailing § 7150

Article 7. Allowance and Rejection of Claims

§ 7960. Procedure by personal representative

7960. ^(a) Upon presentation of a claim ^{ON} to the personal representative, ~~or upon transmittal of a claim filed with the court,~~ the personal representative shall allow or reject it. ^(b) The allowance or rejection shall be in writing ^(c) filed with the clerk, and with the date of the allowance or rejection entered on the writing.

Comment. Section 7960 continues the substance of portions of former Sections 710 and 711.

Query. Existing Sections 710 and 711 require allowance or rejection of a claim by the personal representative or the judge to be filed with the clerk. What is the reason for the filing, and can it be eliminated?

^(A) containing the following language:

- (1) Name of claimant
- (2) Total amount of claim
- (3) Date of first issuance of letters, as described in §7820
- (4) Date of death
- (5) Date claim was served on personal representative
- (6) Estimated value of estate
- (7) Amount allowed and/or rejected by personal representative
- (8) Whether personal representative is authorized to administer the estate under The Independent Administration of Estates Act
- (9) Amount approved and/or rejected by judge or commissioner if personal representative is not authorized to administer the estate under The Independent Administration of Estates Act
- (10) Date and signature of judge or commissioner

(c) A copy of the allowance/rejection shall be served upon the claimant by the personal representative or the judge or commissioner if applicable.

(d) The original allowance/rejection, with proof of service by mail upon the claimant, shall be filed by the personal representative or the judge or commissioner, if applicable.

(e) Notwithstanding the requirements of subsection (b) above, a rejection substantially conforming to those requirements shall be deemed properly made.

§ 7861. Procedure by court

7861. (a) If the personal representative allows a claim, ^(A) the clerk, immediately after the filing of the allowance, shall present the claim and allowance to the court for approval or rejection. [The clerk shall, at the same time, indorse on the claim the date of presentation to the court.]

(b) When the claim is presented to the court, the court may, in its discretion, examine the claimant and others on oath, and hear any legal evidence touching the validity of the claim. The court shall indorse upon the claim approval or rejection, and the date of the approval or rejection.

~~[(c) If the court approves the claim, the approval shall be filed with the clerk within 30 days and the date of approval, together with the amount approved, shall be entered in the register by the clerk.]~~

Comment. Section 7861 continues the substance of portions of former Sections 708, 710, 711, and 713.

CROSS-REFERENCES

Actions at chambers § 7123

Independent Administration of Estates Act §591.6j

BHBA ADDITIONS:

^(A) and such allowance is not made under The Independent Administration of Estates Act,

^(B) (c) Within 10 days of the court's action, the clerk shall mail a notice of such action to the claimant and the personal representative (or his or her attorney).

§ 7862. Effect of statute of limitations

7862. (a) No claim barred by the statute of limitations shall be allowed by the personal representative or approved by the court.

(b) No claim that has been allowed is affected by the statute of limitations, pending administration of the estate.

Comment. Section 7862 continues the substance of the first and third sentences of former Section 708.

CROSS-REFERENCES

Actions at chambers § 7123

BHBA COMMENTS

We agree with the Los Angeles County Bar Association position (in Memo 85-34) on not tolling the statute of limitations, because the personal representative should not be placed in a better position than the decedent,

§ 7863. Allowed and approved claims—*contest by interested person*

7863. (a) Every claim allowed by the personal representative and *OR* approved by the court shall be ranked among the acknowledged debts of the estate, ~~to be paid in due course of administration.~~

(b) The validity of an allowed and approved claim may be [con-
tested] by any interested person at any time before settlement of the
account of the personal representative in which it is first reported as
an allowed and approved claim. This subdivision does not apply to a
claim established by a judgment against [the personal representative.]

Comment. Section 7863 continues the substance of the first sen-
tence of former Section 713. For claims established by judgments, see

CROSS-REFERENCES

Definition

Interested person § 48

Payment of claims § 7890-7897

Should go to new § 7890 below,

§ 7964. Notice of rejection

7964. When a claim is rejected either by the personal representative or by the court, written notice of rejection shall be given by the personal representative to the claimant. If it appears to the satisfaction of the court that the residence of the claimant is not known, and that the claimant cannot be found, the court shall order the notice to be given by filing it with the clerk.

Comment. Section 7964 continues the substance of the first and last sentences of former Section 714.

Query. Existing Section 714 includes a procedure for service of notice of rejection on the clerk where the residence of the claimant is not known. Isn't the claimant's mailing address on the claim, and why shouldn't this be preferred to the residence of the claimant?

BHBA COMMENTS

We believe this entire section is now unnecessary because:

1. The first sentence is handled in §7860 above.
2. The second sentence is unnecessary in view of the provisions for claims to be deemed rejected in 30 days. It is the duty of the claimant to advise the personal representative of any change of address.

§ 7865. Failure of personal representative or court to act

7865. If ^{by the 30th day} ~~within 30 days~~ after a claim is made, the personal representative or court has refused or neglected to act on the claim, the refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection ~~on the 30th day~~.

Comment. Section 7865 supersedes the first sentence of former Section 712. Section 7865 substitutes a 30-day period for the 10-day period formerly provided. *good!*

BHBA QUERY:

What if the personal representative approves the claim, but the court delays approval? When does the 3-month period begin?

§ 7866. Partial allowance

7866. (a) The personal representative may allow, or the court may approve, a claim in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A claimant who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner prescribed in Section 7867. The claimant shall recover no costs in the action unless the claimant recovers a greater amount than that allowed or approved.

Comment. Section 7866 continues the substance of former Section 717.

§ 7967. Action on rejected claim

7967. (a) A rejected claim is forever barred unless, within three months after the date of service of the notice of rejection, if the claim is then due or, if not, within ^{three} ~~two~~ months after it becomes due, the claimant brings an action for recovery of the claim [in the proper court] against the personal representative. ^(P) The time during which there is a vacancy in the administration is not included in any limitation prescribed in this subdivision for bringing suit upon a rejected claim.

(b) Within 10 days after the filing of the complaint the plaintiff shall file [or cause to be filed] in the estate proceedings, in the office of the clerk, ^{with a copy served upon the personal representative} a notice of the pendency of the action/ ^{and served,} If the notice is not so filed, the personal representative shall incur no liability as a result of any distribution of the estate. [~~Personal service of a copy of the summons and complaint upon the personal representative within the 10-day period is equivalent to filing the notice.~~]

(c) If the claimant fails to recover, the claimant shall pay all costs, including reasonable attorney's fees, to be fixed by the court in which the action is brought.

(d) QUERY: Should former §719 re costs go here?

Comment. Subdivision (a) of Section 7967 continues the substance of a portion of the first sentence and the second, third, and fourth sentences of former Section 714 and of former Section 715. Subdivision (c) is comparable to the last sentence of Section 7915(c) (where personal representative is creditor).

CROSS-REFERENCES

Definition

Clerk § 29

Query. Section 714 requires filing of a notice of pendency of an action, but excuses the requirement if the personal representative is personally served. What is the reason for the filing requirement, since the personal representative will be served in every case, personally or by mail, as the defendant in the action?

BHBA COMMENTS:

1. 7967(a). This dual system (3 months if claim due; 2 months if claim not yet due) unnecessary. Also, should there be any sanctions if personal representative does not comply with the requirements of §7960?
2. 7967(b), last sentence. Yet another dual system which is not necessary. However, the personal representative needs to know immediately, so the first two sentences regarding filing and service are crucial, especially when in civil cases, actions are sometimes not served for months.
3. We especially agree with the State Bar's suggestion on 2-25-85 (85-34) that the Probate Court should be the forum for trying these cases.

^(A) or an agreement is entered into with the personal representative under §7971 to refer the matter to a commissioner or under §7972 to refer the matter to arbitration.

BHBA SUGGESTED NEW SECTION

§7870. Compromise of Claims

HERE SHOULD BE INSERTED THE SUBSTANCE OF FORMER
SECTIONS 578, 578a, to be followed by the substance
of former Section 718.5

7868/1
 § 7868. Reference to determine disputed claim

7868. If the personal representative doubts the correctness of a claim, or has rejected a claim in whole or in part, or has failed to act on the claim within the time provided in Section 7865, the personal representative may do either of the following:

(a) Enter into an agreement in writing with the claimant to refer the matter in controversy to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee shall have the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The designated person shall make and file a decision in writing in which the facts found and conclusions of law shall be separately stated, and cause a copy of the decision to be mailed promptly to the parties. Judgment shall be entered on the decision and shall be as valid and effective as if it had been rendered by a judge of the court in an action against the personal representative commenced by ordinary process.

(b) Enter into an agreement in writing with the claimant that a judge sitting in probate, pursuant to the agreement and with the written consent of the judge, both filed with the clerk, may hear and determine the matter in controversy pursuant to the procedure provided in subdivision (a). [The agreement and consent shall be filed within the time specified in Section 7867 for bringing an independent action.]

Comment. Section 7868 continues the substance of former Section 718(2).

NOTE - MORE CLAIMANTS AND PERSONAL REPRESENTATIVES SHOULD USE THIS! PROBATE COURT IS FASTER THAN CIVIL COURT!

⁷⁸⁷²
§ 7869. Submission of claim to arbitration

⁷⁸⁶⁹
⁷⁸⁷² The personal representative may enter into an agreement in writing with a person having a disputed claim against the decedent or the estate, or with a person against whom the decedent or the estate has a disputed claim, to submit the matter in controversy to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, but no such agreement is effective unless it is first approved by the court and a copy of the approved agreement is filed in the proceeding.

Comment. Section 7869 is drawn from Section 2406 (guardianship and conservatorship).

Note. This section applies to actions by as well as against the estate, and may be relocated.

BHBA SUGGESTED SECTIONS

\$7873 Acceptance of Deed in Lieu of foreclosure or
trustee's sale; approval

THE SUBSTANCE OF FORMER §718.6 SHOULD BE COPIED HERE.

\$7874 Grants of partial satisfaction or partial reconveyance;
petition; notice; authorization

THE SUBSTANCE OF FORMER §718.7 SHOULD BE COPIED HERE.

Article 8. Claims Established by Judgment§ 7880. Money judgment against decedent

7880. (a) After the death of the decedent, the following judgments are not enforceable under the Code of Civil Procedure against the estate of the decedent but are payable in the due course of administration:

(1) A judgment upon a claim for money rendered against the decedent during the decedent's lifetime.

(2) A judgment upon a claim for money rendered against a decedent who died after trial and submission of the case to a judge sitting without a jury for decision or after a verdict.

(3) A judgment rendered against the personal representative upon a claim for money against the estate of the decedent.

(b) Except as provided in Section 7881, a judgment referred to in subdivision (a) shall be filed or presented in the same manner as other claims.

Comment. Section 7880 continues the substance of former Section 730(a)-(b). For an exception to the rule of Section 7880, see Section 7883.

CROSS REFERENCES

Property under levy of execution § 7883

§ 7881. Money judgment against personal representative

7881. When a judgment rendered against a personal representative upon a claim for money [against the estate of the decedent] becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable in the due course of administration. An abstract of the judgment shall be [filed] in the administration proceedings.

Comment. Section 7881 continues the substance of former Section 731.

§ 7883. Property under levy of execution

7883. If any property of the decedent is levied upon under a writ of execution before the decedent dies, the property levied upon may be sold or collected to satisfy the judgment. The officer making the sale or collection shall account to the personal representative for any surplus. If the judgment is not so satisfied, the balance of the judgment remaining unsatisfied is payable in the due course of administration.

Comment. Section 7883 continues the substance of former Section 730(c).

§ 7884. Converting attachment lien to judgment lien

7884. (a) Pursuant to subdivision (b), an attachment lien may be converted into a judgment lien upon property of the estate subject to the attachment lien in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, after entry of judgment in the action in which the property was attached and prior to the expiration of the attachment lien, the levying officer shall serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien upon the person holding property pursuant to the attachment or shall record or file an abstract of the judgment and a notice that the attachment lien has become a judgment lien in any office where the writ and notice of attachment are recorded or filed. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer. The judgment lien has the same priority as the attachment lien.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied upon pursuant to the attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of such members of the decedent's family. The claim of exemption may be made at any time prior to the time the abstract and notice has been served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

Comment. Section 7884 continues the substance of former Section 732.

BEBA SUGGESTED NEW SECTION

§7890 Payment in due course

Every claim allowed by the personal representative, whether or not under The Independent Administration of Estates Act, and/or approved by the court, shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration according to the following priorities:

COPY HERE THE SUBSTANCE OF FORMER SECTIONS 950-953ff re
PRIORITIES AND DEPOSIT FOR CONTINGENT CLAIMS.

Comment: This was formerly §7863(a)

BHBA SUGGESTED NEW SECTION

§7891 Promise of personal representative to pay debts of decedent

No personal representative is chargeable upon any special promise to answer in damages or to pay the debts of the decedent out of his own estate unless the personal representative has signed an agreement in writing to do so.

Comment: Former §____.

Article 9. Payment of Claims
[Subject to reorganization]

§ 7893. Interest on claims

7893. (a) Except as provided in subdivision (b), no greater rate of interest shall be paid upon any claim after its allowance and approval than 10 percent per annum. If the estate is insolvent, no greater rate of interest shall be paid upon any debt, [from the time of the first publication of notice to creditors,] than is allowed upon judgments.

(b) For claims based upon written contract, the rate of interest specified in the contract shall be paid in accordance with the terms of the contract until the claim is paid in full.

(c) If any debt of the decedent bears interest, whether made as a claim or not, the personal representative, by order of the court, may pay the amount then accumulated and unpaid, or any part of such amount, at any time when there are [sufficient funds properly applicable to the payment], whether the claim is then due or not. The interest shall thereupon cease to accrue upon the amount paid.

Comment. Section 7893 continues the substance of former Section 733.

§ 7897. Deposit for unknown claimant

7897. (a) Whenever an estate is in all other respects ready to be closed, and it is made to appear to the satisfaction of the court, by affidavit or by evidence taken in open court, that an allowed and approved claim has not been and cannot be paid because the claimant cannot be found, the court shall make an order fixing the amount of the claim, with interest, if any, and directing the personal representative to deposit that amount with the county treasurer of the county in which the proceedings are pending.

(b) The county treasurer shall give a receipt for the deposit, and is liable for the deposit upon the official bond of the county treasurer. The receipt shall be deemed and received by the court as a voucher in favor of the personal representative with the same force and effect as if executed by the claimant.

(c) Any money deposited with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. Any money deposited in the State Treasury under the provisions of [this?] section shall be deemed to be so deposited under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7897 continues the substance of former Section 738.

CROSS-REFERENCES

Code Civ. Proc. § 166, Actions at chambers

Claimant not found § 7864(b)

ATTORNEY (OR PARTY WITHOUT ATTORNEY) (Name and Address) ATTORNEY FOR (Name) SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS MAILING ADDRESS CITY AND ZIP CODE BRANCH NAME ESTATE OF (NAME): <div style="text-align: right;">DECEDENT</div>	<div style="text-align: right;">TELEPHONE NO</div> <div style="text-align: center;">FOR COURT USE ONLY</div> <div style="border-top: 1px solid black; padding-top: 5px;"> Filed for approval <div style="display: flex; justify-content: space-between; width: 80%;"> (date) (Deputy) </div> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> Duplicate mailed <div style="display: flex; justify-content: space-between; width: 80%;"> (date) (Deputy) </div> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> Presented to court for approval <div style="display: flex; justify-content: space-between; width: 80%;"> (date) (Deputy) </div> </div> <div style="border-top: 1px solid black; padding-top: 5px;"> CASE NUMBER </div>
CREDITOR'S CLAIM*	

This claim must be presented to the personal representative or filed in the office of the clerk of the court in duplicate within four months after the date of first issuance of letters or as provided in Probate Code, § 700.

DECLARATION OF CLAIMANT

1. Total amount of the claim: \$
2. Claimant (name):
 - a. ☐ an individual.
 - b. ☐ an individual or entity doing business under the fictitious name of (specify):
 - c. ☐ a partnership. The person signing has authority to sign on behalf of the partnership.
 - d. ☐ a corporation. The person signing has authority to sign on behalf of the corporation.
3. Address of claimant (specify):
4. I am authorized to make this claim which is justly due or may become due. To my knowledge there are no offsets or payments that have not been credited.

I declare under penalty of perjury under the laws of the State of California that this creditor's claim is true and correct.

Date:

.....
(TYPE OR PRINT NAME AND TITLE)

.....
(SIGNATURE OF CLAIMANT)

(Continued on reverse)

* See reverse for instructions before completing.

76C857-RP031 - 1-85

Form Approved by the
Judicial Council of California
OE-170 (Rev. January 1, 1985)

CREDITOR'S CLAIM
(Probate)

Prob C 705-708, 710
712-714, 717

ATTORNEY (OR PARTY WITHOUT ATTORNEY) (Name and Address)		TELEPHONE NO	FOR COURT USE ONLY	
ATTORNEY FOR (Name) SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS MAILING ADDRESS CITY AND ZIP CODE BRANCH NAME			Filed for approval	(date) (Deputy)
ESTATE OF (NAME): <div style="text-align: right;">DECEDENT</div>			Duplicate mailed	(date) (Deputy)
			Presented to court for approval	(date) (Deputy)
ALLOWANCE/ REJECTION OF CREDITOR'S CLAIM		CASE NUMBER		

1. Name of claimant:
2. Total amount of claim:

(Items 5-10 to be completed by the personal representative)

5. Date of first issuance of letters:
6. Date of death:
7. This claim was presented on (date):
8. Estimated value of estate:

9. ☐ Claim is allowed for: \$
☐ Claim is rejected for: \$
10. ☐ The personal representative is authorized to administer the estate under The Independent Administration of Estates Act.

.....
 (TYPE OR PRINT NAME)

.....
 (SIGNATURE OF PERSONAL REPRESENTATIVE)

11. ☐ Approved for: \$

☐ Rejected for: \$

Date:

12. ☐ Number of pages attached:

SIGNATURE OF ☐ JUDGE ☐ COMMISSIONER

☐ Signature follows last attachment

ESTATE OF (NAME): <div style="text-align: right;">Decedent</div>	CASE NUMBER:
---	--------------

PROOF OF SERVICE BY MAIL

I am over the age of 18 and not a party to this cause. I am a resident of, or employed, in the county where the mailing occurred.
My residence or business address is *(specify)*:

Allowance/Rejection of Creditor's Claim

I served the foregoing ~~Notice of Hearing (Probate)~~ by enclosing a true copy in a sealed envelope addressed to each person whose name and address is given below and depositing the envelope in the United States mail with the postage fully prepaid.

☐ ~~I served with this notice a copy of the petition or other document referred to in the notice.~~

(1) Date of deposit:

(2) Place of deposit *(city and state)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

.....
(TYPE OR PRINT NAME)

.....
(SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

☐ Personal Representative¹

☐ Claimant²

¹ If Judge or Commissioner

² If Personal Representative; or Judge or Commissioner

ALLOWANCE/ REJECTION OF CREDITOR'S CLAIM

~~NOTICE OF HEARING~~
~~(Probate)~~