

## Memorandum 85-60

Subject: Study L-655 - Probate Referee System

This memorandum presents background information concerning the probate referee system.

Appraisal Systems Used in Other States

Attached (pink sheets) is comparative information showing the systems used in other states for appraisal of a decedent's estate. The information was collected and prepared for presentation by Phillip Jelsma, a student legal assistant.

You will note that in 80 percent of the states, the appraisal of a decedent's estate is made by the personal representative. In a number of these states, the personal representative is specifically authorized to employ an expert appraiser to assist in the appraisal. California is one of the ten states that require an appraisal by someone other than the personal representative. The notes to the table contain additional relevant information.

Role of Probate Referee

The California Probate Referee Association, by a letter from Edward V. Brennan, dated October 24, 1984, provided the Commission with the following statement in support of the position that the probate referee system should be retained as a mandatory element of probate administration.

The California Probate Referee Association contends that the advantages of the Probate Referee System are such that the system should be preserved as a mandatory element of probate administration. The probate referee's role in the probate procedure provides many benefits.

(a) The present system of having probate judges supervise the distribution of the estates is especially necessary in today's strife-ridden society.

The role of the probate referee as independent appraiser and judicial aide has been proven over the years to be an inexpensive, helpful and efficient part of the probate system. The referee's appraisal expedites the process without losing the benefits of judicial supervision.

(b) The probate judges and probate commissioners benefit from the independent appraisal system. Probate judges often have very lengthy calendars requiring them to deal with many cases or issues in a limited time period. The issues presented to the judge often require an immediate decision without sworn testimony. Many of these decisions cannot be made without confidence that the values represented on the petitions and inventories are accurate; this is best achieved by having assets independently appraised in all cases. Relying upon the independent appraisals of the probate referee, the judge can with confidence make decisions involving abatement of devises at date of death values, sales of real and personal property, investment decisions by fiduciaries, creditor's claims, the division of property, the accuracy of accountings, the prorations of taxes and expenses, interest to be paid on delayed distributions, appropriateness of fiduciary and legal expenses as well as the appropriateness of property management fees, fees for extraordinary services, fees for preparation of tax returns, sale of real estate, etc. Many estates cannot afford expensive "outside" appraisals. The probate judge, however, needs the information, and having it in all cases expedites the probate process without lessening the accuracy and reliability of the judicial decisions on these many issues.

(c) The probate procedure, since it does require an inventory, will always need someone to verify the values on that inventory. The referee serves as a clearing house to help detect and correct problems with inventories (such as inadequate preparation of inventories, improper legal descriptions by members of the public, attorneys, paralegals, etc.) The referees, therefore, help to insure the expeditious presentation of all inventoried items at the earliest possible point in the probate process, before the inventory ever gets to the judge's attention. Without the referee providing this function, the courts would become bogged down in improper and imprecise reports, inventories, appraisements, etc. The present procedure is fast, simple, expeditious and accurate.

(d) The local referee is a statutory officer of the court working for the local probate judge. As an independent professional, unencumbered by the bureaucracy, the referee serves as a helpful intermediary between local citizens and the

probate court. As a result, the appraisal system works efficiently and with individual attention to the needs of the beneficiaries, fiduciaries, professionals and court personnel involved.

(e) It is especially important to point out that the referees minimize litigation. The referees are independent appraisers. The judge does not have to question whether their appraisal is being presented in an adversary context, solely to obtain a desired result. In addition, the conflict which results when different sides retain their own appraisers to prove a point does not present itself. Were there no independent referees, various parties would be required to present their own appraisals in an adversary context and the reliability of the appraisal would be questionable. As a result, other parties, who do not approve of the value, would be placed in the position of retaining their own appraisers at a substantial cost to contest the appraisal of the original party.

(f) Referees are located in all counties of the State and have an efficient system for using ancillary services. The ranks of the referees include appraisers, attorneys, accountants, brokers and other professionals. Each has an operating staff and office. These offices are in contact with the local professionals, realtors, ranchers, business people, judges, etc. Dismantling this efficient system and putting in a new system would be expensive and would be a financial loss to the general public without any gain.

(g) The referee deals with small estates as well as large, with heirs and fiduciaries who do not have attorneys, and with new attorneys who are unfamiliar with probate procedure as well as sophisticated law and accounting firms. The referees are especially helpful to those persons who may be struggling from inexperience.

(h) The qualifications of probate referees have been determined and tested. They are usually professionals from all walks of life who have substantial experience in business matters. They are required by law to pass an examination prior to appointment.

(i) Allowing self-appraisal invites abuse. In addition, to the conflicts and the expense of litigation that result, self-appraisal may leave probate courts without much confidence that such opinions are reliable. By having independent appraisals, the probate calendars can be handled without requiring testimony and other evidence which would require additional time and additional probate judges, commissioners and staff.

(j) The costs of the system to any one estate is insubstantial, and small estates benefit from the same appraisal services as large estates at the same relative costs. The reason for this low cost is that the mandatory element spreads the costs among all users. Without being mandatory, the system could not be so inexpensive and efficient.

The benefits of mandatory appraisal by the Probate Referee are such that it should remain in effect as part of the California Probate Code.

Respectfully submitted,

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Executive Secretary

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## STATE APPRAISAL SYSTEMS

| State          | Appraisal<br>by Someone<br>other than<br>P.R. | P.R. may<br>make<br>Appraisal | P.R. makes<br>appraisal but<br>specifically<br>authorized to<br>appoint indep.<br>appraiser | Who appoints<br>independent<br>appraiser |
|----------------|---|-------------------------------|---|--|
| Alabama        | X(1)  |                               |   | Court                                    |
| Alaska         |   | X                             | X   | P.R.                                     |
| Arizona        |   | X                             | X   | P.R.                                     |
| Arkansas       |   | X(2)                          |   |  |
| California     | X(3)(7)                                       |                               |   | Court                                    |
| Colorado       |   | X                             | -   |  |
| Connecticut    |   | X                             | X   | P.R.                                     |
| Delaware       |   | X                             | X   | P.R.                                     |
| D.C.           | X(4)  |                               |   | P.R.                                     |
| Florida        |   | X                             | X   | P.R.                                     |
| Georgia        |   | X(5)                          |   |  |
| Hawaii         |   | X                             | X   | Court or<br>Registrar                    |
| Idaho          |   | X                             | X   | P.R.                                     |
| Illinois       |   | X                             | X   | Court                                    |
| Indiana        |   | X                             | X   | P.R.                                     |
| Iowa           |   | X(6)                          |   |  |
| Kansas         |   | X(5)                          |   |  |
| Kentucky       |   | X                             |   |  |
| Louisiana      | X   |                               |   | Notary                                   |
| Maine          |   | X                             | X   | P.R.                                     |
| Maryland       |   | X                             | X   | P.R. or<br>Registrar                     |
| Massachusetts  |   | X(5)                          |   |  |
| Michigan       |   | X                             | X   | P.R.                                     |
| Minnesota      |   | X                             | X   | P.R.                                     |
| Mississippi    | X(7)  |                               |   | Court                                    |
| Missouri       |   | X                             | X(8)  | P.R.                                     |
| Montana        |   | X                             | X   | P.R.                                     |
| Nebraska       |   | X                             | X   | P.R.                                     |
| Nevada         |   | X                             | X   | P.R.                                     |
| New Hampshire  | X   |                               |   | Court                                    |
| New Jersey     |   | X                             | X   | P.R.                                     |
| New Mexico     |   | X                             |   |  |
| New York       |   | X                             |   |  |
| North Carolina |   | X                             | X   | P.R.                                     |
| North Dakota   |   | X                             | X   | P.R.                                     |
| Ohio           | X(9)  |                               |   | P.R.                                     |
| Oklahoma       |   | X(5)                          |   |  |
| Oregon         |   | X                             | X   | P.R.                                     |
| Pennsylvania   |   | X                             |   |  |
| Rhode Island   |   | X(5)                          |   |  |
| South Carolina | X   |                               |   | Court                                    |
| South Dakota   |   | X                             | X   | P.R.                                     |
| Tennessee      |   | X                             |   |  |

| State         | Appraisal<br>by Someone<br>other than<br>P.R. | P.R. may<br>make<br>Appraisal | P.R. makes<br>appraisal but<br>specifically<br>authorized to<br>appoint indep.<br>appraiser | Who appoints<br>independent<br>appraiser |
|---------------|---|-------------------------------|---|--|
| Texas         |   | X(5)                          |   |  |
| Utah          |   | X                             | X   | P.R.                                     |
| Vermont       |   | X(10)                         | X   | P.R.                                     |
| Virginia      |   | X                             | X   | Court                                    |
| Washington    |   | X                             | X   | P.R.                                     |
| West Virginia | X   |                               |   | P.R.                                     |
| Wisconsin     | X(9)  |                               |   | Court                                    |
| Wyoming       | X   |                               |   | Court                                    |

## State Appraisal Statutes

Alabama - Ala. Code §§ 43-2-311, 42-2-314 (1975)  
Alaska - Alaska Stat. § 13.16.370 (1972)  
Arizona - Ariz. Rev. Stat. Ann. § 14-3707 (1975)  
Arkansas - Ark. Stat. Ann. §§ 62-2301, 62-2716 (1971)  
California - Cal. Prob. Code § 605 (West Supp. 1985)  
Connecticut - Conn. Gen. Stat. Ann. §§ 45-202, 45-2029 (West Supp. 1984)  
Delaware - Del. Code Ann. tit. 12, § 1904 (1979)  
District of Columbia - D.C. Code § 20-712 (1981)  
Florida - Fla. Stat. Ann. § 733.605 (West 1976)  
Georgia - Ga. Code Ann. §§ 53-7-70, 53-7-71 (1982)  
Hawaii - Hawaii Rev. Stat. § 560.3-707 (West Supp. 1983)  
Idaho - Idaho Code § 15-3-707 (1978)  
Illinois - Ill. Ann. Stat., Chap. 110 & 1/2, § 20-8 (Smith-Hurd 1978)  
Indiana - Ind. Code Ann. § 29-1-12-1 (West 1979)  
Iowa - Iowa Code Ann. § 633.365 (West 1964)  
Kansas - Kan. Stat. Ann. § 59-1202 (1983)  
Kentucky - Ky. Rev. Stat. Ann. § 395.250 (Baldwin 1984)  
Louisiana - La. Code Civ. Proc. Ann. Art. 3132 (West 1964)  
Maine - Me. Rev. Stat. Ann. tit. 18-A, § 3-707 (1981)  
Maryland - Md. Est. & Trusts § 7-202 (1974)  
Massachusetts - Mass. Ann. Laws Chap. 195 § 6 (Michie/Law Co-op 1981)  
Michigan - Mich. Stat. Ann. § 275.5605 (Callaghan 1980)  
Minnesota - Minn. Stat. Ann. § 524.3-707 (West Supp. 1975)  
Mississippi - Miss. Code Ann. § 91-7-109 (1973)  
Missouri - Mo. Ann. Stat. § 473.233 (Vernon Supp. 1985)  
Montana - Mont. Code Ann. § 72-3-607 (1983)  
Nebraska - Neb. Rev. Stat. §§ 30-2467, 30-2468 (1978)  
Nevada - Nev. Rev. Stat. § 144.020 (1979)  
New Hampshire - N.H. Rev. Stat. Ann. § 554.2 (1974)  
New Jersey - N.J. Stat. Ann. § 3B:16-2 (West 1983)  
New Mexico - N.M. Stat. Ann. § 45-3-706 (Supp. 1984)  
New York - N.Y. Surr. Ct. Proc. Act § 2107 (McKinney 1967)  
North Carolina - N.C. Gen. Stat. § 28A-20-4 (1976)  
North Dakota - N.D. Cent. Code § 30.1-18-07 (1976)  
Ohio - Ohio Rev. Code Ann. § 2115.02 (Page 1976)  
Oklahoma - Okla. Stat. Ann. tit. 58 §§ 281, 282 (West Supp. 1984)  
Oregon - Ore. Rev. Stat. § 113.185 (1983)  
Pennsylvania - 20 Pa. Code Stat. Ann. § 3302 (Purdon 1975)  
Rhode Island - R.I. Gen. Laws § 33-94 (Supp. 1983)  
South Carolina - S.C. Code Ann. § 21-15-340 (Law Co-op 1977)  
South Dakota - S.D. Codified Laws Ann. § 30-16-2 (1984)  
Tennessee - Tenn. Code Ann. § 30-2-301 (Supp. 1984)  
Texas - Tex. Rev. Stat. Ann. Art. 17 § 248.241 (Vernon 1980)  
Utah - Utah Code Ann. § 75-3-706 (1978)  
Vermont - Vt. Stat. Ann. tit. 14 § 1052 (1974)  
Virginia - Va. Code § 64.1-133 (1979)  
Washington - Wash. Rev. Code Ann. § 11.44.066 (Supp. 1984)  
West Virginia - W. Va. Code § 44-1-14 (1982)  
Wisconsin - Wis. Stat. Ann. §§ 858.13, 858.15 (West Supp. 1984)  
Wyoming - Wyo. Stat. § 2-7-404 (Supp. 1984)

## Appraisal Footnotes

1. Property may be exempt from appraisal if the testator makes an express provision in his will to that effect. An interested party may challenge the lack of appraisal or the judge may order appraisal if the estate is likely to be wasted.
2. Independent appraisal is required if the P.R. is going to sell real property.
3. Independent appraisal is not required for cash or cash equivalents and life and accident insurance proceeds.
4. Appraisal not required for debts owed the decedent, cash accounts, debts from the P.R., corporate stocks on a regional, OTC or national exchange.
5. Appraisal not required unless an interested party requests it.
6. Appraisal may be ordered for estate tax purposes.
7. Court may dispense with appraisal.
8. Hiring of an appraiser must be authorized by the court.
9. Assets with a readily ascertainable value need not be appraised.
10. Appraisal is required if an interested party with a claim of \$500 or more petitions the court requesting an appraisal.