

## Memorandum 85-72

Subject: Study L-1031 - Probate Code (Passage of Property to  
Surviving Spouse Without Administration)

Attached is a staff draft of Tentative Recommendation Relating to Passage of Property to Surviving Spouse Without Administration. This staff draft is presented for Commission approval before it is sent out to interested persons and organizations for review and comment.

The staff draft is a revised draft of material considered at the May 1985 meeting, and incorporates the Commission decisions made at that meeting. A "Draftsman's Note" under a few of the sections notes matters for your special attention.

We urge you to read the entire Tentative Recommendation with care prior to the meeting even though the preliminary portion of the Tentative Recommendation outlines the changes it would make in existing law.

At the last meeting, a question was raised as to whether the existing law concerning the right of the surviving spouse to dispose of real property should be continued. See Sections 9620-9622 of the attached draft. As suggested by the Commission, the staff wrote to representatives of the California Land Title Association and asked whether the sections served any useful purpose. In response, we received a letter (attached as Exhibit 1) indicating that the sections are useful. As suggested by the Commission at the May 1985 meeting, we have clarified the existing provision in Section 9620 to indicate when the provision applies. This will eliminate existing uncertainty and may reduce the scope of the existing provision. See O. McCarroll, 1 California Decedent Estate Administration Supplement § 4.69 at 133 (June 1985) ("Counsel should determine local title insurance practice before relying on Prob C § 649.2, particularly if title to the real property in question stood only in decedent's name."). The staff has added a new section, not in the prior draft, to save dispositions under the prior law. See Section 9622.

The staff suggests that the attached material be revised after the meeting to incorporate any revisions made by the Commission at the meeting and then be distributed to local bar associations and other interested persons and organizations for review and comment.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

STAFF DRAFT  
(not approved by Commission)

TENTATIVE RECOMMENDATION

relating to

PROBATE LAW

(PASSAGE OF PROPERTY TO SURVIVING SPOUSE WITHOUT ADMINISTRATION)

August 1985

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the recommendation it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN NOVEMBER 15, 1985.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION  
4000 Middlefield Road, Suite D-2  
Palo Alto, Ca 94303-4739

**CALIFORNIA LAW REVISION COMMISSION**

4000 MIDDLEFIELD ROAD, SUITE D-2  
PALO ALTO, CA 94303-4739  
(415) 494-1335



September 10, 1985

**LETTER OF TRANSMITTAL**

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The goal is to submit an entire new code to the Legislature for enactment in 1987. The Commission is now sending drafts of portions of the new code to interested persons and organizations for review and comment.

This tentative recommendation set forth the Commission's tentative conclusions concerning the the portion of the new code relating to passage of property to surviving spouse without administration.

The preliminary portion of the tentative recommendation indicates the principal substantive revisions the proposed legislation would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you may find a reference to other portions of the new code that are in rough draft form and not yet available for distribution for review and comment.

A Comment follows each section of the proposed legislation. The Comment gives the source of the section and indicates any changes the section would make in existing law.

Comments showing the disposition of each existing section that would be superseded by the proposed legislation can be found at the end of the tentative recommendation.

## PASSAGE OF PROPERTY TO SURVIVING SPOUSE WITHOUT ADMINISTRATION

When a married person dies, the property which passes to the surviving spouse is not subject to probate administration unless the surviving spouse elects to have it administered.<sup>1</sup> The surviving spouse<sup>2</sup> may obtain a court order determining that all or part of the decedent's estate is property passing to the surviving spouse.<sup>3</sup> The court order may also confirm the surviving spouse's ownership of the surviving spouse's one-half share of the community and quasi-community property.<sup>4</sup> The order may be obtained without the need for probate administration.<sup>5</sup> Although the surviving spouse is not required to petition for the order, such an order is sometimes required by a title insurance company or a stock transfer agent.<sup>6</sup>

Unless the interests of both spouses are probated, the surviving spouse is personally liable for the deceased spouse's debts that are

- 
1. Prob. Code § 649.1.
  2. In addition to the surviving spouse, the personal representative, guardian, or conservator of the surviving spouse's estate may obtain an order. Prob. Code § 650.
  3. The procedure for obtaining an order determining that separate, community, and quasi-community property passed to a surviving spouse is found in Probate Code Sections 650-658. An order determining that separate property passed to the surviving spouse may only be obtained under those sections where the decedent died after 1984. The same procedure can be used to obtain an order confirming the surviving spouse's ownership of the surviving spouse's one-half share of the community and quasi-community property.
  4. Prob. Code §§ 650, 655.
  5. Prob. Code §§ 650, 655.
  6. See 17 Cal. L. Revision Comm'n Reports 426 (1984).

chargeable against the community or quasi-community property.<sup>7</sup> The surviving spouse also is personally liable for the debts of the deceased spouse that are chargeable against the separate property passing to the surviving spouse without administration.<sup>8</sup> This personal liability is limited. The liability does not exceed the value at the date of death (less the amount of any liens and encumbrances) of the total of the following:

(1) The surviving spouse's one-half share of the community and quasi-community property that is not exempt from the enforcement of a money judgment.

(2) The deceased spouse's one-half share in the community and quasi-community property that passes to the surviving spouse without administration.

(3) The separate property of the deceased spouse that passes to the surviving spouse without administration.<sup>9</sup>

After 40 days from the death of a spouse, the surviving spouse has full power to sell, lease, mortgage, or otherwise deal with and dispose of the community and quasi-community real property, unless a notice is recorded in the county in which the property is situated to the effect that an interest in the property is claimed by another under the will of the deceased spouse.<sup>10</sup>

---

7. Prob. Code § 649.4. Funeral expenses and expenses of last illness are not charged to the community share of the surviving spouse. Prob. Code § 951.1. For rules governing liability of community and quasi-community property for the debts of a spouse, see Civil Code Sections 5120.010-5122.

8. See note 7, supra.

9. Prob. Code § 649.4(a).

10. Prob. Code § 649.2. The personal representative, guardian, or conservator of the estate of the surviving spouse has the same power. *Id.*

The new code restates and reorganizes the existing law summarized above with a few substantive changes and additions. The significant changes and additions are described below.<sup>11</sup>

Collection of deceased spouse's earnings. The new code includes provisions that give the surviving spouse the right immediately to collect not more than \$5,000 of the earnings owed by an employer to the deceased spouse. Payment is made upon receipt of an affidavit (or declaration under penalty of perjury) executed by or on behalf of the surviving spouse. This new procedure is drawn from the existing affidavit procedure for collection of a small estate.<sup>12</sup> However, the surviving spouse may use the new procedure without regard to the value of the estate. Use of this new procedure will provide the surviving spouse with funds until a probate proceeding can be commenced and a family allowance obtained.

Right of surviving spouse to dispose of real property. The new code limits the existing provision<sup>13</sup> giving the surviving spouse full power to sell, lease, mortgage, or otherwise deal with and dispose of the community or quasi-community property to the following cases:

(1) Where the property is held as of record in the name of the surviving spouse only.

(2) Where the property is held as of record by the deceased spouse and the surviving spouse as joint tenants.

---

11. Minor changes are indicated in the Comments to the sections of the new code.

12. Prob. Code §§ 630-632.

13. Prob. Code § 649.2.

(3) Where the property is held as of record by the deceased spouse and the surviving spouse as community property.

This new limitation will make clear when the provision applies, thereby giving the surviving spouse a marketable title.<sup>14</sup>

Right to probate only portion of surviving spouse's interest in community or quasi-community property. The new code makes clear that the surviving spouse may elect to probate only a portion of the surviving spouse's one-half of the community or quasi-community property. This will permit, for example, probate of all of a block of stock that is community property without the need to probate the surviving spouse's one-half share of the other community and quasi-community property.<sup>15</sup>

Procedural changes. The new code makes several changes in the procedure for obtaining an order determining that all or part of the decedent's estate is property passing to or belonging to the surviving spouse:

---

14. The application of the existing provision is uncertain. See O. McCarroll, 1 California Decedent Estate Administration Supplement § 4.69 at 133 (June 1985) ("Counsel should determine local title insurance practice before relying on Prob C §649.2, particularly if title to the real property in question stood only in the decedent's name."). The new provision makes clear that it does not apply where community or quasi-community property is held as of record only in the name of the deceased spouse. The new provision will not affect the validity of dispositions made under Probate Code Section 649.2 prior to the operative date of the new code.

15. The rights of creditors will not be adversely affected. The existing personal liability of the surviving spouse for the debts of the deceased spouse chargeable against the community or quasi-community property will continue, reduced by the fair market value of the community and quasi-community property administered in the estate of the deceased spouse.



(1) The existing requirement<sup>16</sup> that a copy of the petition be served with the notice of hearing on the petition for the order is not continued.<sup>17</sup> This change is consistent with the general practice in probate proceedings not to serve a copy of the petition with the notice of hearing on the petition.<sup>18</sup>

(2) The general requirement<sup>19</sup> applicable to notices of hearings--that the notice of hearing be served not less than 10 days before the hearing--is adopted in place of the existing requirement<sup>20</sup> that notice of hearing be given not less than 20 days before the hearing.

(3) An inventory and appraisement is not required in order to obtain the order, but the petitioner has the option to file an inventory and appraisement in the proceeding if the petitioner so desires. The existing authority of the court to require an inventory and appraisement where the interests of justice require<sup>21</sup> is limited to cases where the filing of an inventory and appraisement is necessary to protect the interests of creditors of an unincorporated

---

16. Prob. Code § 653. A copy of the petition is not required to be served under existing law if all of the deceased spouse's property passes to the surviving spouse under the deceased spouse's will and no contingencies in the will remain to be satisfied at the time of the filing of the petition. Prob. Code § 653(b).

17. The new code will continue the existing requirement that a copy of the petition accompany the notice of hearing where notice of hearing is required to be given to the Attorney General. See Prob. Code § 653(a)(5).

18. See Prob. Code § 1200.5.

19. Prob. Code § 1200.5(b).

20. Prob. Code § 653.

21. Prob. Code § 657.

business which the deceased spouse was operating or managing at the time of death.<sup>22</sup>

(4) The provision of existing law<sup>23</sup> for court approval of the attorney's fee for services performed in connection with the obtaining of a court order determining that property is property passing to or belonging to the surviving spouse is not continued. Under the new code, the attorney's fee for services performed in connection with obtaining the court order is to be determined by private agreement between the attorney and the client and is not subject to approval by the court. This replaces the existing law which provides for court approval of a portion only of the legal fees that are likely to be involved in the disposition without administration of the estate of a deceased spouse.<sup>24</sup>

---

22. See Prob. Code § 656. A provision expressly giving the court authority to require the filing of an inventory and appraisement will be added to the provision of the new code that continues the substance of existing Probate Code Section 656.

23. See Prob. Code § 910(b).

24. Existing law provides only for court approval of the fee for filing a petition and obtaining a court order determining that all or part of the decedent's estate is property passing to or belonging to the surviving spouse. see Prob. Code § 910 (b). See also Prob. Code §§ 650, 655. No provision is made in existing law for court approval of the attorney's fee for other legal work in connection with the estate (such as, for example, tax work, joint tenancy termination, transfer of registered ownership of corporate shares or other registered personal property, or collection of insurance proceeds); those matters are left to private agreement between the attorney and client. The new code leaves the entire matter of legal fees to private agreement between the attorney and client where there is no election by the surviving spouse to probate the estate of the deceased spouse.

Outline of Draft Statute

## DIVISION 8. DISPOSITION OF ESTATES WITHOUT ADMINISTRATION

PART 2. PASSAGE OF PROPERTY TO SURVIVING SPOUSE  
WITHOUT ADMINISTRATION

## CHAPTER 1. GENERAL PROVISIONS

- § 9600. Necessity of administration
- § 9601. Property subject to administration
- § 9602. Election of administration
- § 9603. Election to transfer property to trustee
- § 9604. Property held in a revocable trust
- § 9605. Application of this part
- § 9606. Reference in written instrument to repealed statutory provisions

CHAPTER 2. RIGHT OF SURVIVING SPOUSE TO DISPOSE OF  
REAL PROPERTY

- § 9620. Right of surviving spouse to dispose of real property
- § 9621. Recording notice of interest in property
- § 9622. Dispositions under former law not affected

## CHAPTER 3. LIABILITY FOR DEBTS OF DECEASED SPOUSE

- § 9630. Personal liability of surviving spouse
- § 9631. Limitation on liability
- § 9632. Effect of commencement of proceedings for administration of estate of deceased spouse
- § 9633. Enforcement of liability

CHAPTER 4. COLLECTION BY AFFIDAVIT OF COMPENSATION  
OWED TO DECEASED SPOUSE

- § 9640. Collection of salary or other compensation, not exceeding \$5,000, by affidavit
- § 9641. Payment of earnings by employer
- § 9642. Protection of employer from liability
- § 9643. Enforcement of payment
- § 9644. Rights of heirs or devisees of deceased spouse not affected
- § 9645. Other methods of collecting compensation not affected

CHAPTER 5. DETERMINATION OR CONFIRMATION OF PROPERTY  
PASSING OR BELONGING TO SURVIVING SPOUSE

- § 9650. Filing of petition
- § 9651. Contents of petition
- § 9652. Filing petition in pending proceeding
- § 9653. Joining petition with petition for probate proceeding

- \$ 9654. Probate of will or administration not precluded by petition
- \$ 9655. Notice of hearing
- \$ 9656. Court order
- \$ 9657. Effect of court order
- \$ 9658. Protection of interests of creditors of business of deceased spouse
- \$ 9659. Inventory and appraisement
- \$ 9660. Attorney's fees

## DIVISION 8. DISPOSITION OF ESTATES WITHOUT ADMINISTRATION

PART 2. PASSAGE OF PROPERTY TO SURVIVING SPOUSE  
WITHOUT ADMINISTRATION

## CHAPTER 1. GENERAL PROVISIONS

§ 9600. Necessity of administration

9600. Except as provided in this chapter, when a husband or wife dies intestate leaving property that passes to the surviving spouse under Section 6401, or dies testate and by his or her will devises all or a part of his or her property to the surviving spouse, the property passes to the survivor subject to the provisions of Chapter 2 (commencing with Section 9620) and Chapter 3 (commencing with Section 9630), and no administration is necessary.

Comment. Section 9600 continues subdivision (a) of former Section 649.1 without substantive change.

## CROSS-REFERENCES

## Definitions

Property § 62

Surviving spouse § 78

Will § 88

§ 9601. Property subject to administration

9601. The following property of the decedent is subject to administration under Division 7 (commencing with Section 7000):

(a) Property passing to someone other than the surviving spouse under the decedent's will or by intestate succession.

(b) Property disposed of in trust under the decedent's will.

(c) Property in which the decedent's will limits the surviving spouse to a qualified ownership. For the purpose of this subdivision, a devise to the surviving spouse that is conditioned on the spouse surviving the decedent by a specified period of time is not a "qualified ownership" interest if the specified period of time has expired.

Comment. Section 9601 continues former Section 649.3 without substantive change. Administration of property described in Section 9601 may be avoided under Part 1 (commencing with Section 9500) (collection or transfer of small estates without administration) if

the requirements of that part are satisfied. See also Chapter 4 (commencing with Section 6600) of Part 3 of Division 6 (small estate set-aside).

#### CROSS-REFERENCES

##### Definitions

Property § 62  
Surviving spouse § 78  
Trust § 82  
Will § 88

#### § 9602. Election of administration

9602. (a) Upon the election of the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse, the following property may be administered under Division 7 (commencing with Section 7000):

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

(2) Both the property described in paragraph (1) and all of the following property:

(A) The one-half of the community property that belongs to the surviving spouse under Section 100.

(B) The one-half of the quasi-community property that belongs to the surviving spouse under Section 101.

(3) Both the property described in paragraph (1) and a specific portion but less than all of the following property:

(A) The one-half of the community property that belongs to the surviving spouse under Section 100.

(B) The one-half of the quasi-community property that belongs to the surviving spouse under Section 101.

(b) The election shall be made by a writing specifically evidencing the election filed in the proceedings for the administration of the estate of the deceased spouse within four months after the issuance of letters [testamentary or of administration], or within such further time as the court may allow upon a showing of good cause, and before entry of an order under Section 9656.

Comment. Section 9602 continues subdivisions (b) and (c) of former Section 649.1 without substantive change with the addition of paragraph (3) of subdivision (a). Paragraph (3) of subdivision (a) makes clear that the surviving spouse may elect to probate only a portion of the surviving spouse's one-half of the community or quasi-community property. This, permits, for example, probate of all of a block of stock that is community property without the need to probate the surviving spouse's one-half share of the other community property.

#### CROSS-REFERENCES

##### Definitions

Community property § 28

Personal representative § 59

Quasi-community property § 66

Surviving spouse § 78

Personal liability of surviving spouse for debts of deceased spouse  
§§ 9630-9633

Transmutation of nature of property, Civil Code § 5110.730

#### § 9603. Election to transfer property to trustee

9603. (a) The surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file an election and agreement to have all or part of the one-half of the community property that belongs to the surviving spouse under Section 100 and the one-half of the quasi-community property that belongs to the surviving spouse under Section 101 transferred by the surviving spouse or the surviving spouse's personal representative, guardian, or conservator to the trustee under the will of the deceased spouse or the trustee of an existing trust identified by the will of the deceased spouse, to be administered and distributed by the trustee.

(b) The election and agreement shall be filed in the proceedings for the administration of the estate of the deceased spouse and before the entry of the decree of final distribution in the proceedings.

Comment. Section 9603 continues subdivision (d) of former Section 649.1 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Community property § 28

Personal representative § 59

Quasi-community property § 66

Surviving spouse § 78

Trust § 82

Trustee § 84

Will § 88

§ 9604. Property held in a revocable trust

9604. Notwithstanding the provisions of this part, community property held in a revocable trust described in Section 5113.5 of the Civil Code is governed by the provisions, if any, in the trust for disposition in the event of death.

Comment. Section 9604 continues former Section 649.5 without substantive change.

CROSS-REFERENCES

Definitions

Community property § 28

§ 9605. Application of this part

9605. (a) Except as provided in subdivision (b), this part applies whether the deceased spouse died before, on, or after [the operative date of this code].

(b) Chapter 5 (commencing with Section 9650) applies only to cases where the deceased spouse died on or after January 1, 1985, and if the deceased spouse died before that date, the case shall be governed by the law made applicable to the case under former Section 658.

Comment. Section 9605 makes this part, except for Chapter 5, applicable whether the deceased spouse died before, on, or after the operative date of this code. See Section \_\_\_\_ (operative date). Subdivision (b) preserves the effect of former Section 658 for cases where the deceased spouse died before January 1, 1985.

DRAFTSMAN'S NOTE. The Commission has not considered whether Chapter 4 (commencing with Section 9640) should apply to cases pending on the operative date of the new code. Subdivision (b) of Section 9605 has not been considered by the Commission. Section 9605 would make the provisions of this part apply without regard to when the deceased spouse died except that subdivision (b) would retain existing law under former Section 658.



§ 9606. Reference in written instrument to repealed statutory provisions

9606. On and after [the operative date of this code], a reference in a written instrument, including a will or trust, to a provision of former Sections 202 to 206, inclusive, repealed by Chapter 527 of the 1984 Statutes, of the Probate Code, or former Sections 649.1 to 649.5, inclusive, of the Probate Code, shall be deemed to be a reference to the comparable provision of this part.

Comment. Section 9606 is drawn from and supersedes former Section 649.6.

CROSS-REFERENCES

Definitions

Trust § 82

Will § 88

CHAPTER 2. RIGHT OF SURVIVING SPOUSE TO DISPOSE OF  
REAL PROPERTY

§ 9620. Right of surviving spouse to dispose of real property

9620. Except as provided in Section 9621, after 40 days from the death of a spouse, the surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse has full power to sell, lease, mortgage, or otherwise deal with and dispose of the community or quasi-community real property, and the right, title, and interest of any grantee, purchaser, encumbrancer, or lessee shall be as free of rights of devisees or creditors of the deceased spouse to the same extent as if the property had been owned as the separate property of the surviving spouse, in any of the following cases:

(a) Where the property is held as of record in the name of the surviving spouse only.

(b) Where the property is held as of record by the deceased spouse and the surviving spouse as joint tenants.

(c) Where the property is held as of record by the deceased spouse and the surviving spouse as community property.

Comment. Section 9620 continues the first portion and the last sentence of former Section 649.2 with the addition of language at the

end of the section making clear the cases where the section applies. The effect of the section is to permit the surviving spouse to convey a marketable title to the property where the property is held as of record in one of the three forms of title specified in the section, without the need to obtain a court order under Chapter 5 (commencing with Section 9650) determining that the property of the deceased spouse is property passing to the surviving spouse. The added language makes clear that the section does not apply, for example, if the property is community or quasi-community property held as of record only in the name of the deceased spouse or where the property is held by the spouses as tenants in common. As to the prior law, see O. McCarroll, 1 California Decedent Estate Administration Supplement § 4.69 at 133 (June 1985) ("Counsel should determine local title insurance practice before relying on Prob C § 649.2, particularly if title to the real property in question stood only in decedent's name."). See also Section 9622 (disposition under former law not affected)

DRAFTSMAN'S NOTE. At the May 1985 meeting, the Commission directed the staff to revise this section to state the cases to which the section applies.

#### CROSS-REFERENCES

##### Definitions

Community property § 28  
Devisee § 34  
Personal representative § 59  
Quasi-community property § 66  
Surviving spouse § 78

#### § 9621. Recording notice of interest in property

9621. (a) Section 9620 does not apply if, within 40 days from the death of the spouse, a notice that satisfies the requirements of this section is recorded in the county in which the property is situated.

(b) The notice shall contain all of the following:

(1) A description of the property in which an interest is claimed.

(2) A statement that an interest in the property is claimed by a named person under the will of the deceased spouse.

(3) The name or names of the owner or owners of the record title to the property.

(c) There shall be endorsed on the notice instructions that it shall be indexed by the recorder in the name or names of the owner or

owners of record title to the property, as grantor or grantors, and in the name of the person claiming an interest in the property, as grantee.

Comment. Section 9621 restates a portion of former Section 649.2 without substantive changes except that Section 9621 contains additional language to make clear that the notice must be recorded within 40 days from the death of the spouse. This clarification is consistent with language in *Wilson v. Superior Court*, 101 Cal. App.2d 592, 595, 225 P.2d 1002 (1951).

#### § 9622. Dispositions under former law not affected

9622. The repeal of former Section 649.2 does not affect any sale, lease, mortgage, or other transaction or disposition of real property made prior to [the operative date of this code] to which that section applied, and such sale, lease, mortgage, or other transaction or disposition shall continue to be governed by the provisions of former Section 649.2 notwithstanding the repeal of that section.

Comment. Section 9622 is a new provision that saves dispositions made under former Section 649.2 even where the property disposed of is not held as of record in one of the three forms described in Section 9620. The application of former Section 9622 was unclear. See the Comment to Section 9620.

### CHAPTER 3. LIABILITY FOR DEBTS OF DECEASED SPOUSE

#### § 9630. Personal liability of surviving spouse

9630. (a) Except as provided in this chapter and in Section [951.1], upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the property described in Section 9631.

(b) The surviving spouse is not liable under this section if all the property described in paragraphs (1) and (2) of subdivision (a) of Section 9602 is administered under Division 7 (commencing with Section 7000).

Comment. Section 9630 continues subdivisions (a) and (c) of former Section 649.4 without substantive change.

## CROSS-REFERENCES

### Definitions

Surviving spouse § 78

### § 9631. Limitation on liability

9631. (a) Subject to subdivision (b), the liability imposed by Section 9630 shall not exceed the fair market value at the date of death, less the amount of any liens and encumbrances, of the total of the following:

(1) The one-half of the community and quasi-community property that belongs to the surviving spouse under Sections 100 and 101 that is not exempt from enforcement of a money judgment.

(2) The one-half of the community and quasi-community property that belongs to the decedent under Sections 100 and 101 that passes to the surviving spouse without administration.

(3) The separate property of the decedent that passes to the surviving spouse without administration.

(b) In computing the total under subdivision (a), the fair market value of any of the community and quasi-community property that is administered under Division 7 (commencing with Section 7000) shall be excluded.

Comment. Section 9631 continues the substance of subdivision (b) of former Section 649.4 without substantive change but with the addition of language to make clear that (1) "value" means "fair market value and (2) the value of community and quasi-community property administered in the estate of the deceased spouse under Division 7 is excluded in determining the extent of the liability of the surviving spouse. See Section 9602(a)(3) (election to administer only a portion of the community and quasi-community property that belongs to the surviving spouse).

## CROSS-REFERENCES

### Definitions

Community property § 28

Property § 62

Quasi-community property § 66

Surviving spouse § 78

§ 9632. Effect of commencement of proceedings for administration  
of estate of deceased spouse

9632. If proceedings are commenced in this state for the administration of the estate of the deceased spouse and the time for filing or presenting claims has commenced, any action upon the liability of the surviving spouse pursuant to Section 9630 is barred to the same extent as provided for claims under [Article 1 (commencing with Section 700) of Chapter 12], except as to the following:

(a) Creditors who had commenced judicial proceedings for the enforcement of the debts and had served the surviving spouse with process prior to the expiration of the time for filing or presenting claims.

(b) Creditors who secure the acknowledgment in writing of the liability of the surviving spouse for the debts.

(c) Creditors who file a timely claim in the proceedings for the administration of the estate of the deceased spouse.

Comment. Section 9632 continues subdivision (d) of former Section 649.4 without substantive change.

CROSS-REFERENCES

Definitions

Surviving spouse § 78

§ 9633. Enforcement of liability

9633. (a) Except as otherwise provided in this chapter, any debt described in Section 9630 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died.

(b) In any action based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

Comment. Section 9633 continues subdivision (e) of former Section 649.4 without substantive change.

CROSS-REFERENCES

Definitions

Surviving spouse § 78

CHAPTER 4. COLLECTION BY AFFIDAVIT OF COMPENSATION  
OWED TO DECEASED SPOUSE

§ 9640. Collection of salary or other compensation, not exceeding  
\$5,000, by affidavit

9640. (a) To collect salary or other compensation owed by an employer for personal services of a decedent, including compensation for unused vacation, not in excess of five thousand dollars (\$5,000), an affidavit or a declaration under penalty of perjury under the laws of the State of California shall be furnished to the employer. An affidavit or declaration under this section may be furnished to the employer at any time after the death of the decedent.

(b) The affidavit or declaration under this section shall state all of the following:

(1) The name of the decedent.

(2) The time and place of the decedent's death.

(3) The affiant or declarant is the surviving spouse of the decedent or is authorized to act on behalf of the surviving spouse of the decedent.

(4) The surviving spouse of the decedent is entitled to the earnings of the decedent under the decedent's will or by intestate succession and no one else has a superior right to the earnings.

(5) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

(6) Sections 9640 to 9645, inclusive, of the California Probate Code require that the earnings of the decedent, including compensation for unused vacation, not in excess of five thousand dollars (\$5,000) be paid to the affiant or declarant.

(7) The person signing the affidavit or declaration affirms or declares that all the statements in the affidavit or declaration are true and further acknowledges that any false statement may subject the person to penalties relating to perjury.

(c) Reasonable proof of the identity of the surviving spouse shall be provided to the employer. If another person is acting for the surviving spouse, reasonable proof of the identity of that person

shall also be provided to the employer. Proof of identity that is sufficient under Section 9533 is sufficient proof of identity for the purposes of this subdivision.

(d) If a person presenting the affidavit or declaration is a person claiming to be acting for the surviving spouse under this chapter, the employer shall be provided with reasonable proof, satisfactory to the employer, of the authority of the person to act for the surviving spouse.

Comment. Section 9640 is a new provision designed to provide a clear and simple procedure that permits a surviving spouse immediately to collect not more than \$5,000 of the earnings owed by an employer to the deceased spouse. The purpose of this section is to provide funds until the probate proceeding is commenced and a family allowance may be obtained.

If the employer does not personally know the surviving spouse, reasonable proof of identity must be provided to the employer. The kinds of proof of identity that may be relied on are specified in Section 9533.

Section 9640 permits the affidavit or declaration to be executed by a person acting on behalf of the surviving spouse. This permits the conservator of the estate of the surviving spouse to use this chapter to collect compensation owing to the deceased spouse. If the person executing the affidavit or declaration claims to be acting for the surviving spouse under this chapter, the employer must be provided with reasonable proof of the identity of the person acting for the surviving spouse and with reasonable proof, satisfactory to the employer, of the authority of the person to act for the surviving spouse. Letters of the conservator of the estate of the surviving spouse would be reasonable proof of authority to act for the surviving spouse.

This chapter is drawn from Section 9530-9544 (affidavit procedure for collection or transfer of property of small estate where death occurred not less than 40 days before affidavit presented to holder of property). However, use of the procedure under this chapter applies without regard to the amount of the decedent's estate; use of the procedure is not limited to cases where the estate is a small estate. And use of the procedure under this chapter is permitted without any delay after the death of the decedent; use of the procedure is not limited to cases where the decedent died not less than 40 days before the affidavit or declaration is presented to the employer.

#### CROSS-REFERENCES

##### Definitions

Surviving spouse § 78

§ 9641. Payment of earnings by employer

9641. If the requirements of Section 9640 are satisfied, the person executing the affidavit or declaration is entitled to have the earnings of the decedent, including compensation for unused vacation, not in excess of five thousand dollars (\$5,000), paid to him or her.

Comment. Section 9641 is a new provision comparable to subdivision (a) of Section 9534. The employer who pays the decedent's earnings to the person presenting the affidavit or declaration is protected from liability. See Section 9642. Payment pursuant to Section 9641 does not preclude later administration of the decedent's estate. See Section 9644. As to the liability of the person receiving the payment, see Section 9644.

§ 9642. Protection of employer from liability

9642. If the requirements of Section 9640 are satisfied, receipt by the employer of the affidavit or declaration constitutes sufficient acquittance for the compensation paid pursuant to this chapter and discharges the employer from any further liability with respect to the compensation paid. The employer has no duty to see to the application of the money paid or to inquire into the truth of any statement in the affidavit or declaration.

Comment. Section 9642 is a new provision that protects the employer who pays to the affiant or declarant compensation owing to the deceased spouse. To obtain this protection, the affidavit or declaration must satisfy the requirements of Section 9640 and must be accompanied by reasonable proof of the identity of the person presenting the affidavit as the surviving spouse or person acting for the surviving spouse and, if someone claims to be acting for the surviving spouse, must be accompanied by reasonable proof of the authority of the person to act for the surviving spouse. See Section 9640 and Comment thereto. Section 9642 is comparable to Section 9535 and is drawn from the first sentence of former Section 631.

§ 9643. Enforcement of payment

9643. (a) If the employer refuses to pay as required by this chapter, the surviving spouse may recover the amount the surviving spouse is entitled to receive under this chapter in an action brought for that purpose against the employer.

(b) If an action is brought against the employer under this section, the court shall award attorney's fees to the surviving spouse



if the court finds that the employer acted unreasonably in refusing to pay as required by this chapter.

Comment. Section 9643 is a new provision comparable to subdivision (b) of Section 9534. Section 9643 makes clear that the duty imposed by Section 9641 may be enforced by an action against the employer. This remedy is in addition to the remedies against the employer if the estate of the deceased spouse is probated. See also Section 9657 (court order determining that property passed to surviving spouse made in proceeding to determine or confirm property passing or belonging to surviving spouse).

#### CROSS-REFERENCES

##### Definitions

Surviving spouse § 78

#### § 9644. Rights of heirs or devisees of deceased spouse not affected

9644. Nothing in this chapter limits the rights of the heirs or devisees of the deceased spouse. Payment of a decedent's compensation pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate. Any person to whom payment is made under this chapter is answerable and accountable therefor to the personal representative of the decedent's estate and is liable for the amount of the payment to any other person having a superior right to the payment received.

Comment. Section 9644 is a new provision that makes clear that the surviving spouse takes under this chapter subject to the rights of any person having a superior right and has the duty to restore the payment received to the decedent's estate if the estate is probated.

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Personal representative § 59

#### § 9645. Other methods of collecting compensation not affected.

9645. The procedure provided in this chapter is in addition and not in lieu of any other method of collecting compensation owed to a decedent.

Comment. Section 9645 makes clear that the procedure provided by this chapter is in addition and not in lieu of any other method of collecting unpaid compensation owed to a decedent. See, e.g., Section 160 (payment of money due to decedent to person designated by decedent), 9530-9544 (affidavit procedure for collection or transfer

of personal property of a small estate), 6600-6613 (small estate set-aside), 9650-9571 (court order determining that property passed to surviving spouse). See also Gov't Code §§ 12479 (designation by state employee of person to receive warrants upon employee's death), 53245 (designation by public employee of person to receive warrants upon employee's death).

CHAPTER 5. DETERMINATION OR CONFIRMATION OF PROPERTY  
PASSING OR BELONGING TO SURVIVING SPOUSE

§ 9650. Filing of petition

9650. (a) A surviving spouse or the personal representative, guardian of the estate, or conservator of the estate of the surviving spouse may file a petition in the superior court of the county in which the estate of the deceased spouse may be administered requesting an order that administration of all or part of the estate is not necessary for the reason that all or part of the estate is property passing to the surviving spouse. The petition may also request an order confirming the ownership of the surviving spouse of property belonging to the surviving spouse under Section 100 or 101.

(b) To the extent of the election, this section does not apply to property that the petitioner has elected as provided in Section 9602 to have administered under Division 7 (commencing with Section 7000).

(c) A guardian or conservator may file a petition under this section without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

Comment. Subdivision (a) of Section 9650 continues the first sentence of subdivision (a) of former Section 650 without substantive change but subdivision (a) of Section 9650 uses language drawn from subdivision (c) of former Section 655 in place of the language of the first sentence of subdivision (a) of former Section 650 which referred to the allegation in the petition. Subdivision (b) of Section 9650 continues subdivision (c) of former Section 650 without substantive change. Subdivision (c) of Section 9650 continues subdivision (d) of former Section 650 without substantive change.

CROSS-REFERENCES

Clerk to set petition for hearing § \_\_\_\_

Definitions

Personal representative § 59

Property § 62

Surviving spouse § 78

§ 9651. Contents of petition

9651. (a) The petition shall allege that administration of all or a part of the estate of the deceased spouse is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse and shall set forth the following information:

(1) If proceedings for the administration of the estate are not pending, the facts necessary to determine the county in which the estate of the deceased spouse may be administered.

(2) A description of the property of the deceased spouse which the petitioner alleges is property passing to the surviving spouse, including the trade or business name of any property passing to the surviving spouse that consists of an incorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death.

(3) The facts upon which the petitioner bases the allegation that all or a part of the estate of the deceased spouse is property passing to the surviving spouse.

(4) A description of any interest in the community property or quasi-community property, or both, which the petitioner requests the court to confirm to the surviving spouse as belonging to the surviving spouse pursuant to Section 100 or 101.

(5) The names, ages, and addresses of the heirs and devisees of the deceased spouse, the names and addresses of all persons named as executors of the will of the deceased spouse, and the names and addresses of all persons appointed as personal representatives of the deceased spouse, which are known to the petitioner.

(b) If the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse, a copy of the will shall be attached to the petition.

Comment. Section 9651 continues a portion of subdivision (a) and all of subdivision (b) of former Section 650 without substantive change except that paragraph (2) of subdivision (a) has been revised to make clear that it is limited to an unincorporated business.

## CROSS-REFERENCES

### Definitions

Community property § 28  
Devisee § 34  
Heirs § 44  
Personal representative § 59  
Property § 62  
Quasi-community property § 66  
Surviving spouse § 78  
Will § 88

Protection of creditors of deceased spouse's business § 9658

Verification of petition § \_\_\_\_

### § 9652. Filing petition in pending proceeding

9652. If proceedings for the administration of the estate of the deceased spouse are pending, a petition under this chapter shall be filed in those proceedings without the payment of an additional fee.

Comment. Section 9652 continues the first sentence of former Section 651 without substantive change.

### § 9653. Joining petition with petition for probate proceeding

9653. If proceedings for the administration of the estate of the deceased spouse are not pending, a petition under this chapter may, but need not, be joined with a petition for probate of the will of the deceased spouse or the appointment of a personal representative of the estate of the deceased spouse.

Comment. Section 9653 continues the second sentence of former Section 651 without substantive change. If proceedings for the administration of the estate of the deceased spouse are not pending, the petition may be joined with a petition for the probate of the will of the deceased spouse or the appointment of a personal representative of the estate of the deceased spouse or the petition may be a separate petition filed in the superior court of the county in which the estate of the deceased spouse may be administered. See Section 9650.

## CROSS-REFERENCES

### Definitions

Personal representative § 59  
Will § 88

### § 9654. Probate of will or administration not precluded by petition

9654. The filing of a petition under this chapter does not preclude the court from admitting the will of the deceased spouse to

probate or appointing a personal representative of the estate of the deceased spouse upon the petition of any person legally entitled, including any petition for probate of the will or for appointment of a personal representative which is joined with a petition filed under this chapter.

Comment. Section 9654 continues former Section 652 without substantive change.

#### CROSS-REFERENCES

#### Definitions

Personal representative § 59

Will § 88

#### § 9655. Notice of hearing

9655. (a) If a petition filed under this chapter is joined with a petition for probate of the deceased spouse's will or appointment of a personal representative of the estate of the deceased spouse, notice of the hearing on the petition shall be given to the persons and in the manner prescribed in Chapter 2 (commencing with Section 7230) of Part 2 of Division 7 and shall be included in the notice of hearing required by that chapter.

(b) If a petition filed under this chapter is not joined with a petition for the probate of the deceased spouse's will or appointment of a personal representative of the estate of the deceased spouse, notice of the hearing on the petition shall be given to the persons and in the manner prescribed in Article 2 (commencing with Section 7240) of Chapter 2 of Part 2 of Division 7.

Comment. Section 9655 supersedes former Sections 653 and 654. The first sentence of former Section 653 is omitted as unnecessary in view of Section [\_\_\_\_\_] which establishes the general requirement that the clerk set petitions for hearing.

Subdivision (a) of Section 9655 continues the substance of former Section 654 with two omissions:

(1) The last sentence of former Section 654, which required that a copy of the petition also be served, is not continued.

(2) The requirement of former Section 654 that notice of the hearing be given at least 20 days prior to the date of the hearing is not continued. By adopting the provisions of Chapter 2 (commencing with Section 7230) of Part 2 of Division 7, subdivision (a) of Section 9655 incorporates the requirement of Section 7240 that notice of hearing be given at least 10 days before the hearing on the petition. See Sections 7240-7243 (service of notice of hearing).

Subdivision (b) of Section 9655 continues the substance of former Section 653 with the following changes:

(1) Except where the notice of hearing is given to the Attorney General, the requirement of former Section 653 that a copy of the petition be served is not continued. This is the result of adopting the provisions of Article 2 (commencing with Section 7240) of Chapter 2 of Part 2 of Division 7.

(2) The requirement of former Section 653 that notice of hearing be given at least 20 days prior to the hearing is not continued. By adopting the provisions of Article 2 (commencing with Section 7240) of Chapter 2 of Part 2 of Division 7, subdivision (b) of Section 9656 incorporates the requirement of Section 7240 that notice be given at least 10 days before the hearing on the petition. See Sections 7240-7243 (service of notice of hearing).

#### CROSS-REFERENCES

Clerk to set petition for hearing § \_\_\_\_

#### Definitions

Devisee § 34

Heirs § 44

Personal representative § 59

Surviving spouse § 78

Will § 88

Verification of petition § \_\_\_\_

#### § 9656. Court order

9656. (a) If the court finds that all of the estate of the deceased spouse is property passing to the surviving spouse, the court shall issue an order describing the property, determining that the property is property passing to the surviving spouse, and determining that no administration is necessary.

(b) If the court finds that a all or part of the estate of the deceased spouse is not property passing to the surviving spouse, the court shall issue an order (1) describing any property which is not property passing to the surviving spouse, determining that that property does not pass to the surviving spouse, and determining that that property is subject to administration under Division 7 (commencing with Section 7000) and (2) describing the property, if any, which is property passing to the surviving spouse, determining that that property passes to the surviving spouse, and determining that no administration of that property is necessary.

(c) If the petition filed under this chapter includes a description of the interest of the surviving spouse in the community or quasi-community property, or both, which belongs to the surviving spouse pursuant to Section 100 or 101 and the court finds that the

interest belongs to the surviving spouse, the court shall issue an order describing the property and confirming the ownership of the surviving spouse.

Comment. Section 9656 continues subdivisions (a) and (b) of former Section 655 without substantive change except for the omission of the provisions of former Section 655 authorizing the court to make any further orders as may be necessary to cause delivery of the property or its proceeds to the surviving spouse or to cause ownership of the property to be confirmed in the surviving spouse.

The order under subdivision (b) of Section 9656 determines that property which is not property passing to the surviving spouse is subject to administration under Division 7. But administration of this property may be avoided under Part 1 (commencing with Section 9500) (collection or transfer of small estates without administration) if the requirements of that part are satisfied. See also Sections 6600-6613 (small estate set-aside).

DRAFTSMAN'S NOTE. In accord with a decision made at the May 1985 meeting, Section 9656 omits provisions of existing law that give the court authority to make any orders that may be necessary to cause ownership of the property to be confirmed in the surviving spouse or to cause delivery of the property or its proceeds to the surviving spouse. These provisions are omitted because the Commission concluded that the order would not be effective if directed to a person that was not a party to the proceeding and would be unnecessary to cause a change in registered title because a change in registered title would be made if a court order is issued confirming the title of the surviving spouse to the registered property.

#### CROSS-REFERENCES

##### Definitions

Community property § 28  
Property § 62  
Quasi-community § 66  
Surviving spouse § 78

##### § 9657. Effect of court order

9657. Upon becoming final, an order under Section 9656 (1) determining that property is property passing to the surviving spouse or (2) confirming the ownership of the surviving spouse of property belonging to the surviving spouse under Section 100 or 101 shall be conclusive on all persons, whether or not they are in being.

Comment. Section 9657 continues subdivision (c) of former Section 655 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Person § 56  
Property § 62  
Surviving spouse § 78

#### § 9658. Protection of interests of creditors of business of deceased spouse

9658. If the court determines that all or a part of the property passing to the surviving spouse consists of an unincorporated business or an interest in an unincorporated business which the deceased spouse was operating or managing at the time of death, the court shall require the surviving spouse to file a list of all of the known creditors of the business and the amount owing to each of them. The court may issue any order necessary to protect the interests of the creditors of the business, including but not limited to the filing of (a) an undertaking and (b) an inventory and appraisalment in the form set forth in Section [600] and made as set forth in [Chapter 9 (commencing with Section 6000)].

Comment. Section 9658 continues former Section 656 without substantive change except that the provision is limited to creditors of an "unincorporated" business and language (drawn from former Section 657) is added to give the court specific authority to require the filing of an inventory and appraisalment where necessary to protect the creditors of the business.

#### CROSS-REFERENCES

##### Definitions

Property § 62  
Surviving Spouse § 78

#### § 9660. Inventory and appraisalment

9660. No inventory and appraisalment of the estate of the deceased spouse shall be required in a proceeding under this chapter. However, within three months after the filing of a petition under this chapter, or within such further time as the court [or judge] for reasonable cause may allow, the petitioner may file with the clerk of the court an inventory and appraisalment in the form set forth in



Section [600]. The appraisalment shall be made as set forth in [Chapter 9 (commencing with Section 600)]. The petitioner may appraise the assets which a personal representative could appraise under Section [605].

Comment. The first sentence of Section 9659 is drawn from former Section 605(a)(2)(A) and supersedes the last sentence of former Section 657. The remainder of Section 9659 is drawn from the first three sentences of former Section 657.

An inventory and appraisalment is not required to obtain an order under this chapter. However, Section 9659 gives the petitioner the option to file an inventory and appraisalment in a proceeding under this chapter if the petitioner so desires. This option permits the petitioner to obtain an independent appraisal made by a probate referee if such an appraisal is desired by the petitioner. But see Section 9658 (authority of court to require the filing of an inventory and appraisalment to protect creditors of unincorporated business of deceased spouse). [See also Section [605(a)(2)(A)] (inventory and appraisalment by probate referee not required for interspousal transfer under this chapter).]

DRAFTSMAN'S NOTE. Section 9659 should be reviewed to determine that it is a satisfactory statement of the Commission's decision at the May 1985 meeting. We have added the first sentence to Section 9659 to continued the substance of a provision of existing Section 605 which provides in part:

"(a) The appraisalment shall be made by the executor or administrator and a probate referee as follows:

(1) [omitted]

(2) All assets other than those appraised by the executor or administrator pursuant to paragraph (1) shall be appraised by a probate referee appointed by the court or judge, except with respect to the following;

(A) Interspousal transfers, as provided in Section 650."

#### § 9660. Attorney's fee

9660. The attorney's fee for services performed in connection with the filing of a petition and obtaining of a court order under this chapter shall be determined by private agreement between the attorney and the client and is not subject to approval by the court.

Comment. Section 9660 eliminates the provision of prior law for court approval of the attorney's fee for services performed in connection with the filing of a petition and obtaining a court order under former Sections 950-958. See former Section 910(b). No provision was made under former law for court approval of the attorney's fee for other legal work in connection with the estate of the deceased spouse, such as, for example, tax work, joint tenancy termination, collection of insurance proceeds, etc., and those matters were left to private agreement between the attorney and the client.

Section 9660 leaves the entire matter of the legal fees to private agreement between the attorney and the client in the case of a petition and order under this chapter, thereby avoiding the provision for court approval of a portion only of the legal fees that are likely to be involved in the disposition of the estate of a deceased spouse.

DISPOSITION OF REPEALED PROBATE CODE SECTIONS

Probate Code § 649.1 (repealed). Necessity of administration; election of administration; transfer of property to trustee

Comment. Former Section 649.1 is continued in substance by the following provisions of the new Probate Code: Subdivision (a) is continued in Section 9600; subdivisions (b) and (c) are continued in Section 9602; subdivision (d) is continued in Section 9603.

Probate Code § 649.2 (repealed). Right of surviving spouse to dispose of property

Comment. Former Section 649.2 is continued in substance by the following provisions of the new Probate Code: The first sentence is continued in Sections 9620 and 9621, the second and third sentences are continued in Section 9621, and the fourth sentence is continued in Section 9620.

Probate Code § 649.3 (repealed). Property subject to administration

Comment. Former Section 649.3 is continued without substantive change in Section 9601.

Probate Code § 649.4 (repealed). Liability for debts of deceased spouse

Comment. Former Section 649.4 is continued in substance by the following provisions of the new Probate Code: Subdivisions (a) and (c) are continued in Section 9630; subdivision (b) is continued in Section 9631; subdivision (d) is continued in Section 9632; subdivision (e) is continued in Section 9633.

Probate Code § 649.5 (repealed). Property held in revocable trust

Comment. Former Section 649.5 is continued in substance in Section 9604.

Probate Code § 649.6 (repealed). Reference in written instrument to repealed statutory provisions

Comment. Former Section 649.6 is continued in substance in Section 9606.

Probate Code § 650 (repealed). Contents of petition by surviving spouse

Comment. Former Section 650 is continued without substantive change by the following provisions of the new Probate Code: The first sentence of subdivision (a) is continued in subdivision (a) of Section 9650 and the introductory clause of subdivision (a) of Section 9651; the remainder of subdivision (a) and all of subdivision (b) are continued in Section 9651 except that the requirement of former Section 650 that the petition be verified has been omitted as unnecessary in view of the general requirement of Section \_\_\_\_ that all petitions be verified; subdivision (c) is continued in subdivision (b) of Section 9650; subdivision (d) is continued in subdivision (c) of Section 9650.

Probate Code § 651 (repealed). Filing petition in pending proceeding or joining petition with petition for probate

Comment. The first sentence of former Section 651 is continued without substantive change in Section 9652. The second sentence is continued in Section 9653 without substantive change, but the word "verified" in former Section 651 has been omitted as unnecessary in view of the general requirement of Section \_\_\_\_ that all petitions be verified.

Probate Code § 652 (repealed). Probate not precluded by petition

Comment. Former Section 652 is continued without substantive change in Section 9654.

Probate Code § 653 (repealed). Hearing on petition; notice of hearing

Comment. The first sentence of former Section 653 is omitted as unnecessary in view of Section \_\_\_\_ which establishes the general requirement that the clerk set petitions for hearing. The remainder of former Section 653 is superseded by subdivision (b) of Section 9655.

Probate Code § 654 (repealed). Notice of hearing on petition joined with petition for probate

Comment. Former Section 654 is superseded by subdivision (a) of Section 9655.

Probate Code § 655 (repealed). Court order

Comment. Subdivisions (a) and (b) of former Section 655 are continued without substantive change in Section 9657, except that the provisions of former Section 655 that authorized the court to make any

further orders as may be necessary to cause ownership of the property to be confirmed in the surviving spouse or the cause delivery of the property or its proceeds to the surviving spouse are not continued. The court order authorized by the omitted provisions could not have been made applicable to persons who were not parties to the proceeding and was not necessary to cause registered title to be transferred to the surviving spouse. The registrar of title would transfer registered title upon presentation of the court order confirming title in the surviving spouse but the order could not be enforced by contempt against the registrar who was not a party to the proceeding in which the order was obtained. Subdivision (c) is superseded by Section 9657.

Probate Code § 656 (repealed). Protection of creditors of business of deceased spouse

Comment. Former Section 656 is continued without substantive change in Section 9658.

Probate Code § 657 (repealed). Filing of inventory and appraisement

Comment. The first three sentences of former Section 657 are continued without substantive change in Section 9659. The last sentence is superseded by the first sentence of Section 9659 and the last portion of Section 9658. See also former Section 605(a)(2)(A) (appraisal not required for interspousal transfers under former Section 650), superseded by first sentence of Section 9659.

Probate Code § 658 (repealed). Applicability of article as amended

Comment. Former Section 658 is superseded by subdivision (b) of Section 9605.