

0035b
10/16/85

#L-1033

Memorandum 85-89

Subject: Study L-1033 - Estates and Trusts Code (Establishing
Identity of Heirs)

Attached to this memorandum is a redraft of the existing provisions governing court proceedings to establish the identity of heirs for purposes of establishing title to property. The redraft preserves existing law, but please see the notes and queries following the redrafted provisions.

Respectfully submitted,

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PART 10. ESTABLISHING IDENTITY OF HEIRS

§ 320. Proceeding authorized

320. (a) If title to property vests [other than by the laws of succession] in a class, without other description or means of identification of the persons in the class, a person claiming to be a member of the class may commence proceedings under this part to establish the identity of the persons in the class.

(b) As used in this section, "person claiming to be a member of the class" includes the successor in interest of such a person and the personal representative of such a person or successor in interest.

Comment. Section 320 restates the first portion of former Section 1190 without substantive change. The reference to heirs, heirs of the body, issue, or children of a person has been replaced by a reference to a "class."

Query. Why should intestate succession be excluded from this part? It can be argued that a quiet title action suffices for intestate succession. But if so, why shouldn't quiet title proceedings suffice for other circumstances where property passes? The court decree under this part is not conclusive, and quiet title would seem to be preferable. On the other hand, this procedure is simpler and may yield a decree on which title insurers are willing to rely.

We have replaced the existing reference to "heirs, heirs of the body, issue, or children of a person" by a reference to a "class." We see no reason to exclude other forms of vesting such as "next of kin," "relatives," or "family" of a person.

§ 321. Petition

321. (a) Proceedings under this part shall be commenced in the superior court of the county in which the property or any part of the property is situated.

(b) Proceedings under this part shall be commenced by filing a verified petition that includes all of the following information:

(1) The basis of the petitioner's claim of title.

(2) A description of the property.

(3) So far as known to the petitioner, the names, ages, and residences of the members of the class whose identity is sought to be established. If any member is dead or if the residence of any member is unknown, the petition shall state these facts.

Comment. Section 321 restates the last portion of former Section 1190 without substantive change.

Note. The verification requirement may be generalized.

§ 322. Notice of hearing

322. (a) The clerk shall set the petition for hearing by the court.

(b) The clerk shall give notice of the hearing in the manner prescribed in Section [1200].

(c) The petitioner shall cause notice of the hearing to be given in the manner prescribed in Section [1200.5].

Comment. Section 322 continues former Section 1191 without substantive change.

Note. The notice provisions are under review.

§ 323. Responsive pleading

323. At any time before the hearing any person interested in the property may contest the petition by an answer that denies any of the matters included in the petition.

Comment. Section 323 continues the first sentence of former Section 1192 without substantive change.

§ 324. Hearing and order

324. (a) The court shall hear the proofs offered by the petitioner and by any contestant and shall make an order establishing the identity of the persons in the class and determining the title of the parties.

(b) The court order is prima facie evidence of the facts established and determined and is conclusive in favor of any person acting in reliance on the order in good faith without notice of any conflicting interest.

Comment. Section 324 restates the second and third sentences of former Section 1192 without substantive change.

COMMENTS TO REPEALED SECTIONS

Probate Code § 1190 (repealed)

Comment. The first portion of former Section 1190 is restated without substantive change in Section 320 (proceeding authorized). The last portion is restated without substantive change in Section 321 (petition).

Probate Code § 1191 (repealed)

Comment. Former Section 1191 is continued without substantive change in Section 322 (notice of hearing).

Probate Code § 1192 (repealed)

Comment. The first sentence of former Section 1192 is continued without substantive change in Section 323 (responsive pleading). The second and third sentences are restated without substantive change in Section 324 (hearing and order).