

Third Supplement to Memorandum 86-15

Subject: Study L - Amendments to Assembly Bill 2625 (Comprehensive Probate Bill)

Attached as Exhibit 1 is a letter from the San Diego County Probate and Estate Planning Subcommittee for Legislation. The Subcommittee has reviewed the disposition without administration provisions and "finds the changes especially to Summary Probate under Probate Code Section 630 to be very beneficial. The clarification will help alleviate much of the uncertainty that has been present over the years."

The Subcommittee reviewed the Tentative Recommendation attached to a memorandum considered at a prior meeting. Under that Tentative Recommendation and under Assembly Bill 2625, the person to whom payment, delivery, or transfer is made is personally liable to any person having a superior right to the property by testate or intestate succession from the decedent, and an action to enforce this liability must be commenced within five years after the affidavit or declaration was presented to the holder of the property. When the Commission considered the Tentative Recommendation, a provision was added tolling the five-year limitation during the minority of the person having the superior right. See also Section 13205 which provides a comparable provision for the affidavit procedure for real property of small value.

Assembly Bill 2625 also imposes a duty on the person to whom the payment, delivery, or transfer was made to restore the property or its fair market value to the estate. A creditor might use this procedure in an effort to enforce payment of a debt or liability of the decedent. An action to enforce this liability is barred three years after the presentation of the affidavit or declaration to the holder of the decedent's property. See also Section 13206(e) which provides a five (rather than three) year period for the affidavit procedure for real property of small value.

The San Diego County Probate and Estate Planning Subcommittee for Legislation makes the following comment:

. . . it is unclear to our subcommittee why a five year statute of limitation period has been picked. . . .

Such a long statute of limitations is unreasonable to place upon the affiant or declarant. Would it not be wiser to have a one or two year statute of limitations? Even under CCP Section 337, the statute of limitations for written contracts is only four years while it is two years for oral contracts. The time limit of creditors to file claims in a Probate proceeding is generally only four months. With a five year statute of limitation, a prospective affiant or declarant must be advised that a probate proceeding on extremely small estates might be wiser to eliminate claims not filed within a four month period rather than take the risk of a five year statute of limitations via the summary administration procedure of Probate Code Section 630. This is certainly not the intent of the Probate Code Section 630 procedure.

The staff believes that there is merit to this suggestion insofar as it concerns the rights of creditors. Under Assembly Bill 2625, we now have two inconsistent limitations insofar as the rights of creditors are concerned--three years in the case of the affidavit procedure for personal property (Section 13111, lines 23-27 on page 26 of bill) and five years in the case of the affidavit procedure for real property (Section 13206, lines 24-28 on page 35 of bill). The staff recommends that these provision be made consistent and that the three-year period be changed to one or two years as suggested by the San Diego Subcommittee.

The Subcommittee also suggests a short limitation on the right of a person having a superior right to the property to recover the property or its fair market value. Assembly Bill 2625 presently provides a five year period which is tolled during the minority of the person having the superior right. This gives the person having a superior right a greater right than is given to a missing person if the missing person appears after the distribution of his or her property, because the five-year period is not tolled in that case. See Section 1358. In addition, the five year period under Assembly Bill 2625 period would commence to run upon discovery of fraud (where the damages recoverable are three times the fair market value of the

property). The staff does not recommend that the five-year limitation period be reduced. However, consideration should be given to substituting a provision that, where there is fraud, the period commences to run upon discovery of the fraud, but that the period is not tolled for any reason.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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Re: Memorandum 85-103 - Dispositions of Estates
Without Administration

Dear Mr. DeMouilly:

The San Diego County Probate and Estate Planning Subcommittee for Legislation considered Memorandum 85-103 and finds the changes especially to Summary Probate under Probate Code Section 630 to be very beneficial. The clarification of the ambiguous areas of Probate Code Section 630 will help alleviate much of the uncertainty that has been present over the years. However, in the section dealing with "Liability of persons to whom payment, delivery or transfer is made" starting at page 12, it is unclear to our subcommittee why a five year statute of limitation period has been picked. I realize the five year statute of limitations is similar to that for missing persons to recover their property after it has been distributed but what that has to do with an Affidavit submitted under Probate Code Section 630 is unclear.

Such a long statute of limitations is unreasonable to place upon the affiant or declarant. Would it not be wiser to have a one or two year statute of limitations? Even under CCP Section 337, the statute of limitations for written contracts is only four years while it is two years for oral contracts. The time limit for creditors to file claims in a Probate proceeding is generally only four months. With a five year statute of limitation, a prospective affiant or declarant must be advised that a probate proceeding on extremely small estates might be wiser to eliminate claims not filed within a four month period rather than take the risk of a five year statute of limitations via the summary administration procedure of Probate Code Section 630. This is certainly not the intent of the Probate Code Section 630 procedure.

Very truly yours,



Daniel B. Crabtree, Chair

DBC/tlm