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2/11/86

Fourth Supplement to Memorandum 86-15

Subject: Study L - Amendments to Assembly Bill 2625 (Manner of Giving
Notice)

Attached to the First Supplement to Memorandum 86-15 are proposed amendments to our comprehensive probate bill (AB 2625) to correct erroneous references in existing law to Probate Code Section 1200 (notice by posting) where a reference to Probate Code Section 1200.5 (notice by mail) is intended. Those amendments carry out the intent of the 1980 legislation referred to in the First Supplement.

Another section (Section 1080) requiring correction has come to the staff's attention. The corrective amendment is attached to this Supplement and should be included in the amendments to be made to AB 2625.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Exhibit 1

AMENDMENTS TO ASSEMBLY BILL 2625

AMENDMENT ____

In line 2 of the title, after "910," insert:

1080,

AMENDMENT ____

On page 8, between lines 1 and 2, insert:

SEC. . Section 1080 of the Probate Code is amended to read:

1080. Anytime after the commencement of the time for filing or presenting claims and prior to the time a petition for final distribution has been filed, the executor or administrator, or any person claiming to be an heir of the decedent or entitled to distribution of the estate or any part thereof, may file a petition setting forth his or her claim or reason and praying that the court determine who are entitled to distribution of the estate. The clerk shall set the petition for hearing by the court. ~~and give notice thereof~~ Notice of the hearing shall be given for the period and in the manner required by Section ~~1200~~ 1200.5. At least 10 days before the date set for the hearing of the petition by the court, the petitioner also shall cause notice of the hearing thereof to be mailed to ~~the executor or administrator and to~~ all legatees and devisees and to all known heirs of the decedent, ~~and to all persons for their attorneys, if they have appeared by attorneys who have requested notice as provided in Section 1202 of this code, or who have given notice of appearance in person or by attorney, addressed to them at their respective post office addresses given in their requests for special notice of notice of appearance, if any, otherwise at their~~ respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such persons. Any person may appear and file a written statement setting forth his interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed to be denied by each of the other claimants to the extent that they conflict with any claim of the latter.

Whenever any estate involves, or may involve, a charitable trust, other than a charitable trust with a designated trustee which may lawfully accept such trust or involves or may involve a bequest or devise for a charitable purpose without an identified legatee, devisee, or beneficiary thereof, or an escheat to the State of California, the Attorney General shall be deemed to be a person entitled to distribution within the meaning of this section and shall be entitled to file the petition referred to in this section and shall be given written notice of the hearing in the same manner as legatees and devisees.

Exhibit 2

COMMENTS TO AMENDED NOTICE PROVISIONS OF AB 2625

Probate Code § 1080 (technical amendment). Determination of heirship

Comment. Section 1080 is amended to substitute a reference to Section 1200.5 (notice by mail) in place of the reference to Section 1200 (posting notice of hearing). This is a technical, nonsubstantive revision.

Prior to 1980, Probate Code Section 1200 required notice both by posting and by mail. In 1980, the provisions for notice by mail were split out of Section 1200 and relocated in a new Section 1200.5 (see 1980 Cal. Stat. ch. 955, §§ 29, 31), but conforming revisions were not made to all the sections of the Probate Code that made reference to Section 1200. The substitution in Section 1080 of a reference to Section 1200.5 (giving notice by mail) in place of the former reference to Section 1200 (posting notice of hearing) will effectuate legislative intent. Subdivision (d) of Section 1200 provides that notice by posting under that section is not required, notwithstanding any other provision of the Probate Code, except for a few matters specifically enumerated in that section, and subdivision (e) of Section 1200.5 provides that the notice by mail under that section is in addition to the notice, if any, required to be given in the manner specified in Section 1200.