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#L-1040

Memorandum 86-19

Subject: Study L-1040 - Estates and Trusts Code (Public  
Administrators--redrafted statute)

Attached to this memorandum is a redraft of the statute governing the public administrator. The redraft adheres generally to existing law, with some reorganization and rewording for clarity. The redraft also incorporates suggestions made by our State Bar advisors on this topic. The changes are noted in the Comments and the Notes and Queries following the draft sections. Accompanying the redraft are Comments noting the disposition of existing provisions and conforming changes.

Our objective at this point is to complete initial review of the redraft in order to make policy decisions so that a tentative recommendation on the subject can be prepared for distribution for comment.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

Staff Draft

CHAPTER 7. PUBLIC ADMINISTRATORS

Article 1. General Provisions

§ 7600. Notice of death

7600. (a) Whenever a person dies in this state without known heirs, the person in possession of the premises in which the decedent died or any person having knowledge of the facts shall give immediate notice of the facts to the public administrator of the county in which the decedent died.

(b) A person who fails to comply with this section is liable for any damage that results from the failure. The liability may be enforced by the public administrator or any interested person.

Comment. Section 7600 restates former Section 1145 with changes to apply it to persons who die testate as well as intestate, to persons without known heirs outside as well as within California, and to persons who die in their own homes as well as in the house or premises of another.

CROSS-REFERENCES

Definitions

Interested person § 48

§ 7601. Assistant or deputy public administrator

7601. An assistant or deputy public administrator or other subordinate officer may be appointed to act and has the powers and may perform the duties of the office of the public administrator to the extent provided in Article 7 (commencing with Section 1190) of Chapter 1 of Division 4 of Title 1 of the Government Code.

Comment. Section 7601 replaces former Section 1142.5 with a reference to the general Government Code provisions governing assistants and deputies.

NOTE. We have replaced the special provisions of existing law authorizing appointment and stating the authority of assistants and deputies because we see no reason to spell out these matters when perfectly adequate general law provisions governing the same subject exist. The situation of the public administrator does not appear to us so unique and special that special provisions are called for.

§ 7602. Enforcement of chapter by district attorney

7602. (a) A public administrator, or person appointed personal representative while acting as public administrator, who fails to deliver any money or property as ordered by the court is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) for each offense.

(b) It is the duty of the district attorney of the county to see that the provisions of this chapter are fully complied with.

Comment. Section 7602 continues former Section 1155 without substantive change.

Article 2. Taking Charge of Property Subject to  
Loss, Injury, or Waste

§ 7620. Authority of public administrator

7620. The public administrator of a county shall take immediate charge of property of a decedent in the county that is liable to loss, injury, or waste, if no personal representative has been appointed.

Comment. Section 7620 restates the first portion of the first sentence of former Section 1140(a) without substantive change. The public administrator may also be appointed special administrator for the property. Sections 8540-8541 (special administrators).

§ 7621. Report of civil officers

7621. All civil officers must inform the public administrator of property of a decedent known to the officer to be liable to loss, injury, or waste that ought to be in the charge of the public administrator.

Comment. Section 7621 restates former Section 1146 without substantive change.

§ 7622. Search for property, will, and burial instructions

7622. (a) A public administrator who takes charge of property of a decedent pursuant to this article may, if there are reasonable grounds to believe that the public administrator may be appointed personal representative, make an immediate search for other property, a will, and burial instructions of the decedent.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section 8200. If burial instructions are found, the public administrator shall forthwith deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

Comment. Section 7622 restates the first portion of subdivision (a) and subdivision (b) of former Probate Code Section 1141 without substantive change.

#### § 7623. Providing information and access

7623. (a) Upon receipt of written certification by the public administrator that there are reasonable grounds to believe that the public administrator may be appointed personal representative, any person, bank, corporation, or other financial institution shall, without letters being issued or under order of the court and without the necessity of inquiring into the truth of any of the facts stated in the certification:

(1) Provide the public administrator information concerning property held in the sole name of the decedent.

(2) Grant the public administrator access to any safe deposit box rented in the sole name of the decedent, for the purpose of inspection and removal of any will or burial instructions. Any costs or expenses incurred for drilling or forcing a safe deposit box shall be borne by the estate of the decedent.

(b) Receipt of the written certification provided by this section constitutes sufficient acquittance for providing information or granting access to the safe deposit box, and for removal of the decedent's will and burial instructions, and fully discharges the person, bank, corporation, or other financial institution from any liability for granting access or for any act or omission of the public administrator with respect to the box.

Comment. Section 7612 restates the last portion of subdivision (a) and subdivision (c) of former Probate Code Section 1141 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Financial institution § 40

§ 7624. Costs and fees for taking charge of property

7624. (a) If the public administrator takes charge of property of a decedent pursuant to this article, but another person is subsequently appointed personal representative, the public administrator is entitled to costs incurred for the preservation of the estate, together with a reasonable fee for services, as a proper and legal charge as an expense of administration of the estate of the decedent, subject to subdivision (b).

(b) The fee for services of a public administrator pursuant to this article shall be not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).

Comment. Section 7624 restates former Section 1144.5 without substantive change.

Article 3. Appointment as Personal Representative

§ 7640. Authority of public administrator

7640. If the estate of a decedent may be administered in a county, the public administrator of the county, with all convenient dispatch:

(a) Shall petition for appointment as personal representative of the estate of a decedent who has no known heirs.

(b) May petition for appointment as personal representative of any other estate.

Comment. Section 7640 restates the second sentence of former Section 1140 without substantive change. See also Sections 7050-7051 (jurisdiction and venue of probate proceedings) and 8461 (priority for appointment).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 7641. Appointment of public administrator

7641. Except as provided in subdivision (b), appointment of the public administrator as personal representative shall be made, and letters issued, in the same manner and pursuant to the same procedure as for appointment of and issuance of letters to personal representatives generally.

(b) The public administrator's oath and official bond are in lieu of the personal representative's oath and bond.

Comment. Section 7641 restates former Section 1140(b) without substantive change.

#### CROSS-REFERENCES

##### Definitions

Letters § 52

Personal representative § 58

NOTE. It has been suggested that the following language be added to subdivision (b):

The minimum amount that would have been charged for an administrator's or executor's bond shall be an expense of every estate administered under this chapter and that amount shall be deposited in the county treasury.

This would have the effect of, to some extent, transferring the cost of administration by the public administrator from the public to the estate.

#### § 7642. General rules governing administration of estates apply

7642. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as personal representatives generally, and the provisions of this division apply to administration by the public administrator.

(b) The public administrator shall receive the same compensation and allowances as are granted by this division to personal representatives generally.

Comment. Section 7642 restates former Section 1142 without substantive change. The public administrator must file an inventory, institute suits for the recovery or protection of property, render accounts, and deliver up the property of the estate in the same manner as personal representatives generally.

NOTE. One of our correspondents (Luther J. Avery) has written that there is a need to re-examine the role of the public administrator in probate administration. "There will be times when a Public Administrator will have to be involved. I would not permit independent administration in that situation." Presumably Mr. Avery is concerned that there may be no known heirs to exercise a check on the public administrator. But the staff believes we must assume that the public administrator is a public officer acting in the public interest. Moreover, the official bond should be adequate protection against abuse.

Mr. Avery also would enable any interested person to "have an easy right to remove the public administrator and expedite settlement of the estate." The staff notes that existing law gives the surviving spouse and close relatives of a decedent the right to remove the public administrator, but not unrelated devisees, more distant relatives, or creditors. The existing removal procedure requires 30 days' notice to interested persons. See Prob. Code §§ 450-453.

#### § 7643. Conflict of interest

7643. (a) The public administrator, after appointment as personal representative, shall not:

(1) Be interested in any expenditure made on account of the estate.

(2) Be associated, in business or otherwise, with any person who is interested in any expenditure made on account of the estate.

(b) The public administrator must attach an affidavit to each of the public administrator's reports to the court showing that the public administrator is not so interested or associated.

Comment. Section 7643 continues former Section 1150 without substantive change, except that reference is made to reports to the court rather than to published reports.

#### § 7644. Payment of unclaimed funds

7644. (a) If after final settlement of an estate any money remains in the possession of the public administrator that should be paid over to the county treasurer pursuant to Chapter 4 (commencing with Section 11800) of Part 10, the court shall order payment to be made within 10 days.

(b) Upon failure of the public administrator to comply with an order made pursuant to subdivision (a), the district attorney of the county shall immediately institute proceedings against the public administrator and the sureties on the official bond for the amount ordered to be paid, plus costs.

Comment. Section 7644 continues former Section 1154 without substantive change, except that reference is made to the general provisions for deposit of funds in the county treasury, rather than to "unclaimed" property.

#### CROSS-REFERENCES

Actions at chambers § 7061

Definition

Court § 30

§ 7645. Additional compensation

7645. (a) As used in this section, "additional compensation" means the difference between the reasonable cost of the administration of an estate and the commissions awarded under Sections [901 and 902].

(b) The public administrator may be awarded additional compensation in any of the following situations:

(1) A person entitled to appointment as personal representative in preference to the public administrator has been given notice under Section 8110 of the public administrator's petition for appointment, and that person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of the personal representative.

Comment. Section 7645 continues former Section 1142.3 without substantive change.

NOTE. It has also been suggested that the public administrator receive the reasonable cost of administration of money or property that is to be distributed to the State of California. This makes sense to the staff--if the estate is uneconomical to administer, why should the state get the benefit as opposed to the county in cases where the county has borne the cost of administration?

§ 7646. Expiration of term of office

7646. (a) Except as provided in subdivision (b), the authority of a public administrator to administer an estate for which the public administrator has been appointed personal representative does not cease upon termination of his or her tenure in the office of public administrator, but his or her authority and duties as personal representative of the estate continue until discharge, as in the case of other personal representatives.

(b) If the compensation of the public administrator is paid by salary and not by fees, the authority of the public administrator ceases upon termination of his or her tenure in the office of public administrator, and his or her authority vests in the successor in the office of public administrator.

Comment. Section 7646 restates former Section 1152 without substantive change.



Article 4. Deposit of Moneys in Estate

§ 7660. "Deposit in a financial institution" defined

7660. As used in this article, "deposit in a financial institution" means:

(a) Deposit of money with one or more banks in the state.

(b) Investment of money in an account in an insured savings and loan association.

(c) Investment of money in shares in an insured credit union.

Comment. Section 7660 is drawn from the first sentence of former Section 1147 and expanded to include credit unions. See also Section 10 (singular includes plural).

CROSS-REFERENCES

Definitions

Account in insured savings and loan association § 22

Shares in an insured credit union § 72

§ 7661. Deposit by public administrator

7661. (a) The public administrator shall, upon receipt, deposit all money of the estate with the county treasurer of the county in which the proceedings are pending or in a financial institution.

(b) Upon deposit under this section the public administrator is discharged from further care or responsibility for the money deposited until the public administrator withdraws it.

Comment. Section 7661 continues the first sentence of former Section 1147 without substantive change. See Section 7660 ("deposit in a financial institution" defined).

§ 7662. Withdrawal of amounts deposited

7662. Money deposited with the county treasurer or in a financial institution may be withdrawn upon the order of the public administrator when required for the purposes of administration.

Comment. Section 7662 continues the second sentence of former Section 1147 without substantive change. See Section 7660 ("deposit in a financial institution" defined).

§ 7663. Interest on money deposited

7663. (a) The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the money available for deposit had been individually and separately deposited in [the] financial institution.

(b) Any interest or dividends credited to the account of the public administrator in excess of the amount credited to the estates pursuant to subdivision (a) shall be deposited in the county general fund in an amount no more than necessary to offset the cost to the general fund of the services of the public administrator and public guardian.

Comment. Section 7663 continues the second paragraph of former Section 1147 without substantive change.

QUERY. How is interest to be credited where deposit is in county treasury? What happens to funds in excess of the amount necessary to offset cost of administrator to general fund?

#### § 7664. Deposit with county treasurer

7664. (a) The county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this chapter and pay the money out upon the order of the public administrator when required for the purposes of administration. The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of all such money.

(b) The county treasurer shall deliver to the State Treasurer or the State Controller all money and other personal property in the possession of the county treasurer belonging to the estate, if after final settlement of the estate, there are no heirs or other persons entitled to the money, or the heirs or other persons entitled to the money do not appear and claim it. Delivery shall be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7663 restates former Section 1148 without substantive change.

NOTE. Conforming changes are needed in various interrelated Code of Civil Procedure sections.

#### § 7665. Deposit unclaimed in financial institution

7665. (a) If money or other property is deposited by the public administrator pursuant to this article in a financial institution, any such money or other property remaining unclaimed at the expiration of five years from the date of the deposit, together with the increase and proceeds of the deposit, shall be presumed abandoned in any of the following situations:

(1) The deposit belongs to the estate of a known decedent for which a personal representative has never been appointed.

(2) The deposit belongs to the estate of a known decedent for which a personal representative has been appointed but no decree of distribution has been rendered due to the absence of interested persons or the failure of interested persons diligently to protect their interests by taking reasonable steps for the purpose of securing a distribution of the estate.

(b) The State Controller may, at any time after the expiration of the five-year period, file a petition in the superior court of the county in which the deposit is held, setting forth the fact that the money or other property has remained on deposit or been invested under the circumstances described in subdivision (a) for the five-year period, and petitioning the court for an order (1) declaring that the money or other property is presumptively abandoned and (2) directing the holder of the money or other property to pay the money or other property to the State Treasurer or State Controller.

(c) Upon presentation of a certified copy of a court order made pursuant to subdivision (b), the financial institution shall forthwith transmit the money or property to the State Treasurer or State Controller for deposit in the State Treasury. The deposit shall be made as provided in Section 1310 of the Code of Civil Procedure. All money or other property deposited in the State Treasury under the provisions of this section shall be deemed to be deposited in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure. The deposit shall be transmitted, received, accounted for, and disposed of as provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 7334 continues former Section 1147.5 without substantive change.

#### CROSS-REFERENCES

##### Definitions

Interested person § 48

Article 5. Summary Disposition of Small Estates

§ 7680. Summary disposition authorized

7680. (a) If a public administrator takes charge of or is appointed personal representative of an estate pursuant to this chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the estate of the decedent does not exceed five thousand dollars (\$5,000). The authority provided by this paragraph may be exercised without further court authorization.

(2) The total value of the estate of the decedent does not exceed the amount prescribed in Section 13100 (affidavit procedure for collection or transfer of personal property). The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(b) Summary disposition may be made whether or not there is a will of the decedent in existence, if the will does not name an executor or if the named executor refuses to act.

Comment. Section 7680 restates portions of former Section 1143(a) and (b) without substantive change, except that the summary disposition amounts are increased from \$3,000 to \$5,000 and from \$20,000 to the amount prescribed in Section 13100.

CROSS-REFERENCES

Definition:

Court § 30

Ex parte orders may be made at chambers § 166

NOTE. The proposed increase of the amounts provided in this section from \$2,000 to \$5,000 in subdivision (a)(1) and from \$20,000 to \$60,000 in subdivision (a)(2) is the most significant change made in this draft. This change is made in response to a suggestion from our State Bar advisors.

The advisors also propose authorizing transfer of real property under subdivision (a)(2) up to \$10,000 gross value. This would be consistent with the Commission's current proposal to the Legislature to provide an affidavit procedure for such real property of small value.

We plan to supplement this Note with further information prior to the time the proposal is considered at the Commission meeting.

§ 7681. Liquidation of assets

7681. A public administrator acting under authority of this article may:

(a) Sell any personal property of the decedent. Sales may be made with or without notice, as the public administrator elects, and title to the property sold shall pass without the need of confirmation by the court.

(b) Withdraw any money of the decedent on deposit with any financial institution.

(c) Collect any indebtedness or claim owing to the decedent.

Comment. Section 7681 continues portions of former Sections 1143 and 1144 without substantive change, except that the ability to withdraw funds is expanded to include other financial institutions besides banks.

CROSS-REFERENCES

Definitions

Financial institution § 40

§ 7682. Payment of demands

7682. The public administrator acting under authority of this article shall pay out the money of the estate in the following order:

(a) Commissions and costs of administration of the public administrator.

(b) Expenses of burial of the decedent and of the decedent's last illness.

(c) Proper claims presented to the public administrator within four months after court authorization of the public administrator to act under this article or after the public administrator takes charge of the estate.

Comment. Section 7682 continues the substance of the second sentence of former Section 1143(a) and a portion of former Section 1143(b), with the addition of a specific reference to the costs of administration.

QUERY. Since there is no notice to creditors, shouldn't there be a liability provision for distributees? The staff would add a liability provision comparable to the provision applicable when there is a Section 630 affidavit distribution of property. To give additional protection, the staff would add an optional procedure to permit the public administrator to give notice to known creditors and cut off their claims after 4 months.

§ 7683. Distribution of property

7683. (a) After payment of the demands prescribed in Section 7682, the public administrator shall deliver any money or other property of a decedent remaining in the possession of the public administrator to the decedent's heirs or devisees or to other persons or public entities entitled thereto by law.

(b) In the absence of any such person or public entity the public administrator shall:

(1) If the proceeding is pursuant to § 7680(a)(1), deposit the balance with the county treasurer for use in the general fund.

(2) If the proceeding is pursuant to Section 7680(a)(2), upon petition, distribute the money or property by court order to the State of California.

(c) Upon rendition of a court order distributing money or other property to the State of California under this section, the public administrator shall immediately transmit to the Treasurer or Controller all money or other property distributed to the State of California, subject to Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7683 continues the substance of a portion of former Section 1143(b) and the fifth and sixth sentences of former Section 1144.

CROSS-REFERENCES

Definition

Devisee § 32

§ 7684. Public administrator's statement of disposition

7684. The public administrator shall file with the clerk of the court a statement showing the property of the decedent that came into possession of the public administrator and the disposition made of the property, if any, together with receipts for all expenditures.

Comment. Section 7684 continues the substance of the fourth sentence of former Section 1144, substituting receipts for vouchers, which have replaced them in practice.

§ 7685. Commission of public administrator

7685. The commissions payable to the public administrator pursuant to this article and the attorney, if any, for the public administrator for the filing of the application provided for in this article, and for performance of any duty or service connected therewith, are those set forth in Sections [901, 902, and 910], except that in any case administered pursuant to this article, the public administrator shall be entitled to a minimum commission of two hundred fifty dollars (\$250).

Comment. Section 7685 continues the substance of former Section 1143(c) and supersedes the second sentence of former Section 1144. See 43 Ops. Cal. Atty. Gen. 192 (4-22-64).

NOTE. The State Bar advisors have proposed increasing the minimum compensation to \$350. The staff believes this is a political matter the Commission should not get involved with.

## COMMENTS TO REPEALED SECTIONS

Probate Code § 1140 (repealed)

Comment. The first portion of the first sentence of subdivision (a) of former Section 1140 is restated without substantive change in Section 7620 (authority of public administrator). The last portion of the first sentence is not continued; instead of directing the public administrator to "take charge" of the estate, the court may appoint the public administrator as special administrator. Section 8541 (procedure for appointment). The second sentence of subdivision (a) is restated without substantive change in Section 7640 (authority of public administrator). Subdivision (b) is restated without substantive change in Section 7641 (appointment of public administrator).

Probate Code § 1140.5 (repealed)

Comment. Former Section 1140.5 is not continued. The county may not return alien indigents to their native land.

Probate Code § 1141 (repealed)

Comment. Former Section 1141 is restated without substantive change in Sections 7622 (search for property, will, and burial instructions) and 7623 (providing information and access).

Probate Code § 1142 (repealed)

Comment. Former Section 1142 is restated without substantive change in Section 7642 (general rules governing administration of estates apply).

Probate Code § 1142.3 (repealed)

Comment. Former Section 1142.3 is continued without substantive change in Section 7645 (additional compensation).

Probate Code § 1142.5 (repealed)

Comment. Former Section 1142.5 is restated without substantive change in Section 7601 (assistant or deputy public administrator).

Probate Code § 1143 (repealed)

Comment. Former Section 1143 is superseded by Sections 7680-7685 (summary disposition of small estates). The new provisions increase the summary disposition amounts from \$3,000 to \$5,000 and from \$20,000 to the amount prescribed in Section 13100.

Probate Code § 1144 (repealed)

Comment. Former Section 1144 is superseded by Sections 7680-7685 (summary disposition of small estates).

Probate Code § 1144.5 (repealed)

Comment. Former Section 1144.5 is restated without substantive change in Section 7614 (costs and fees for taking charge of property).



Probate Code § 1145 (repealed)

Comment. Former Section 1145 is restated without substantive change in Section 7600 (notice of death).

Probate Code § 1146 (repealed)

Comment. Former Section 1146 is restated without substantive change in Section 7611 (report of civil officers).

Probate Code § 1147 (repealed)

Comment. The first sentence of the first paragraph of former Section 1147 is restated without substantive change in Sections 7660 ("deposit in a financial institution" defined) and 7661 (deposit by public administrator). The second sentence is continued without substantive change in Section 7662 (withdrawal of amounts deposited). The second paragraph is restated without substantive change in Section 7663 (interest on money deposited).

Probate Code § 1147.5 (repealed)

Comment. Former Section 1147.5 is continued without substantive change in Section 7665 (deposit unclaimed in financial institution).

Probate Code § 1148 (repealed)

Comment. Former Section 1148 is restated without substantive change in Section 7664 (deposit with county treasurer).

Probate Code § 1149 (repealed)

Comment. Former Section 1149 is not continued. Payment of fees is controlled by general rules governing payment of the expenses of administration. See, e.g., Sections 7642 (general rules governing administration of estates apply) and 7682 (payment of demands).

Probate Code § 1150 (repealed)

Comment. Former Section 1150 is continued without substantive change in Section 7643 (conflict of interest).

Probate Code § 1152 (repealed)

Comment. Former Section 1152 is restated without substantive change in Section 7646 (expiration of term of office).

Probate Code § 1154 (repealed)

Comment. Former Section 1154 is continued without substantive change in Section 7644 (payment of unclaimed funds).

Probate Code § 1155 (repealed)

Comment. Former Section 1155 is continued without substantive change in Section 7602 (enforcement of chapter by district attorney).

CONFORMING CHANGES

Government Code § 29616 (repealed)

~~29616. The publication of the semiannual report by the public administrator of a county charge~~

Comment. The semiannual report to which former Section 29616 referred was repealed in 1981. See former Probate Code § 1153.