

#L-1040

Second Supplement to Memorandum 86-19

Subject: Study L-1040 - Estates and Trusts Code (Public Administrator--
suggestions of the San Francisco public administrator)

Attached to this memorandum as Exhibit 1 is a letter from the office of the Public Administrator for the City and County of San Francisco, suggesting a number of revisions in the statute governing public administrators. The Public Administrator believes that the proposed changes would allow for more efficient and economical administration of small estates. "Currently, public administrators throughout the State must file for the complete administration of estates of only \$20,000. This procedure is time consuming and costly to the courts, the offices of the public administrators, and to the heirs."

For convenience of reference, the staff has organized the changes proposed by the Public Administrator below following the staff draft of the public administrator statute attached to Memorandum 86-19.

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)~~ ten thousand dollars (\$10,000). The authority provided by this paragraph may be exercised on statement of the public administrator without further court authorization.

(2) The total value of the estate of the decedent does not exceed ~~the amount prescribed in Section 13100 of the Family Code~~ the amount prescribed in Section 13100 of the Family Code for collection of transfer of personal property fifty thousand dollars (\$50,000). 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.

(c) Nothing in this article precludes the public administrator from filing any petition with the court pursuant to any other provision of this code if necessary for the proper administration of the estate.

STAFF NOTE. EXISTING LAW LIMITS THE (a)(1) PROCEDURE TO \$3,000, THE STAFF DRAFT INCREASES THIS AMOUNT TO \$5,000, AND THE PRESENT PROPOSAL IS FOR \$10,000.

EXISTING LAW LIMITS THE (a)(2) PROCEDURE TO \$20,000, THE STAFF DRAFT INCREASES THIS AMOUNT TO THE SMALL ESTATE AFFIDAVIT AMOUNT (CURRENTLY \$60,000), AND THE PRESENT PROPOSAL IS FOR \$50,000.

§ 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) Sell real property of the decedent subject to [Article 3 (commencing with Section 780) (sale of real property) of Chapter 13 of Division 3] or pursuant to [Article 2 (commencing with Section 591) (independent administration of estates) of Chapter 8 of Division 3]. Title to the property sold shall pass with the public administrator's deed.

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

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

§ 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 and the attorney, if any, for 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, in the order prescribed in Section [950] (order of payment).

STAFF NOTE. EXISTING LAW PROVIDES FOR PAYMENT OF THE COMMISSIONS OF THE PUBLIC ADMINISTRATOR. THE STAFF DRAFT ADDS "COSTS OF ADMINISTRATION", WHICH ARGUABLY INCLUDES THE COST OF THE PUBLIC ADMINISTRATOR'S ATTORNEY.

§ 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, in the absence of a will, to the decedent's heirs.

(b) In the absence of any such person 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 after deduction of all commissions and additional compensation awarded by the court to the public administrator and attorney for the public administrator, if any.

(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.

§ 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, pursuant to Section 7680(a)(2), together with receipts for all expenditures.

§ 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 or the statement provided for in this article Section 7680, and for performance of any duty or service connected therewith, shall be 10 percent of the first three thousand five hundred dollars (\$3,500) and then as provided in Sections [901, 902, and 910] for the statutory and extraordinary services of an administrator and attorney, 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).

STAFF NOTE. EXISTING LAW STATES IN ONE PLACE (SECTION 1144) THAT THE FEE IS 10% ON THE FIRST \$2,500, AND ABOVE THAT AMOUNT FOLLOWING THE GENERAL PERSONAL REPRESENTATIVE FEE SCHEDULE (SECTION 901). IN ANOTHER PLACE (SECTION 1143(c)) EXISTING LAW STATES THAT THE GENERAL FEE SCHEDULE APPLIES, SUBJECT TO A \$250 MINIMUM. THESE PROVISIONS ARE INCONSISTENT AND AN ATTORNEY GENERAL OPINION STATES THAT THE LATTER PROVISIONS GOVERN. FOR THIS REASON THE STAFF DRAFT SIMPLY STATES THAT THE GENERAL FEE SCHEDULE GOVERNS (4% ON THE FIRST \$15,000, ETC.). THE PRESENT PROPOSAL IS BASED ON THE SPECIAL PROVISIONS OF SECTION 1144, INCREASING THE FEE FROM 10% ON THE FIRST \$2,500 TO 10% ON THE FIRST \$3,500, SUBJECT TO A \$350 MINIMUM.

THE NET EFFECT OF THE PRESENT PROPOSAL IS TO CHANGE THE PUBLIC ADMINISTRATOR'S FEE FOR SUMMARY DISPOSITION OF SMALL ESTATES AS FOLLOWS:

<u>AMOUNT OF ESTATE</u>	<u>PRESENT FEE</u>	<u>PROPOSED FEE</u>
\$ 2,500	\$250	\$350
\$ 3,500	\$250	\$350
\$ 5,000	\$250	\$410
\$10,000	\$400	\$610
\$15,000	\$600	\$810
\$20,000	\$750	\$960

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

§ 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~~ more than ~~five hundred dollars~~ ~~(\$500)~~ one thousand dollars (\$1,000).

The staff is aware that the public administrators have felt in a financial bind for the past few years and have sought to obtain fee increases. Legislation to do some of the same things suggested by the San Francisco Public Administrator in the present proposal was introduced by Senator Speraw in 1983 (SB 299), but was refused passage on the Assembly Floor by a vote of 39 to 33. The staff does not know what the concerns were at that time.

We are not sure of the reasons for all the proposals set out in the Public Administrator's letter, and expect the Public Administrator will elaborate upon them at the Commission meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

City and County of San Francisco



PUBLIC ADMINISTRATOR
PUBLIC GUARDIAN
1212 Market Street
San Francisco, CA 94102
Telephone 558-4161

January 22, 1986

PUBLIC ADMINISTRATOR
PUBLIC GUARDIAN:
James R. Scannell

ATTORNEY:
Lou Aronian

CALIFORNIA LAW REVISION
4000 Middlefield Road, D-2
Palo Alto, CA 94306

IN REPLY REFER
TO OUR FILE NO

Attention: Mr. John Demouilly
Executive Secretary

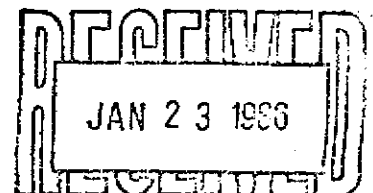
Dear Mr. Demouilly:

As I discussed with you last week the Public Administrator of San Francisco, James R. Scannell, wishes to initiate changes to various sections of the probate code. These sections allow for the summary administration of the small estates probated by the public administrators of the State.

Enclosed are copies of the sections of the code Mr. Scannell would like amended. Copy A is a copy of the current code with the amendments superimposed. Copy B is the new text.

In reading the new text you will see that the proposed changes would increase the dollar amounts of the summary estates. The proposed changes would also allow for the sale of real property in the summary administration of small estates. The sales of real property would conform with Sections 780 and 591 of the probate code. The proposed amendments would also allow for the filing of noticed petitions to the court to resolve any issue that may arise in the course of administration.

Mr. Scannell believes the proposed changes would allow for a more efficient and economical administration of small estates. Currently, public administrators throughout the State must file for the complete administration of estates of only \$20,000. This procedure is time consuming and costly to the courts, the offices of the public administrators, and to the heirs.



January 22, 1986

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CALIF. LAW REVISION COMM.
4000 Middlefield Rd., D-2
Palo Alto, CA 94306

It is Mr. Scannell's understanding that Assembly Bill 2625 is before the State Legislature. This assembly bill apparently contains amendments to the probate code. It is this office's hope that the changes Mr. Scannell proposes can be included in Assembly Bill 2625.

It is this office's further understanding that amendments to Assembly Bill 2625 will be discussed at the meeting of the California Law Revision Commission on February 13 and 14, 1986, in San Francisco. Mr. Scannell would like to have the discussion of his proposed amendments put on the agenda for that meeting.

Please inform Mr. Scannell or myself if the proposed changes to Sections 1143, 1144 and 1144.5 of the probate code can be put on the agenda for February 13 and 14. If you or the members of the commission have any question or need further information, please contact this office.

Thank you for your assistance in this matter.

Very truly yours,



JONATHAN FERDON
Associate Attorney

JF:nfl

Encls.

1143 Administration of Small Estates

(a) Except as provided in subdivision (b), when a public administrator takes possession of the estate of a decedent as provided in this chapter, and it appears that the total value of the estate of the decedent does not exceed ^{fifty thousand dollars} ~~twenty-thousand-dollars~~ ^(\$50,000) ~~(\$20,000)~~ ^{Why? can it be eliminated?} (excluding any motor vehicle owned by the decedent), the public administrator may apply to the superior court of his county or a judge thereof for an order permitting him summarily to sell any personal/^{and real} property belonging to the decedent, and to withdraw any money of the decedent on deposit with any bank, and to collect any indebtedness or claim that may be owing to the decedent. The money received from any such sale or collection shall be used to pay commissions to the public administrator^{and the attorney, if any,}; / and to defray the expenses of the burial of the decedent and the expenses of his last illness; the balance, if any, shall be used to pay other claims presented to the public administrator within ^{pursuant to Section 950 of this code} four months of the above order /and there shall be no administration upon the estate unless additional property is discovered.

No notice of the application need be given. The application may be filed whether or not there is a will of the decedent in existence, if the executor named therein refuses to act, or if the will does not appoint an executor.

(b) When a public administrator takes possession of the estate of a decedent as provided in this chapter, and it appears that the total value of the estate of the decedent does not exceed ten thousand dollars (\$10,000) ~~three-thousand-dollars-(\$3,000)~~, the public administrator may, instead of applying to the superior court or judge thereof for collect all assets belonging to the decedent on a public administrators statement an order provided in subdivision (a),/apply such money or ^{the}proceeds ^{or real} from the sale of any personal / property towards the expense of the burial of the decedent, pay other proper claims presented within four months after the public administrator takes possession pursuant to Section 950 of this code of the estate,/and pay over the remaining funds to the heirs or legatees, or if none, deposit the balance with the county treasurer for use in the general fund. after one year of deposit. Heirs or beneficiaries of the decedent can claim funds on deposit with the county treasurer if the claim is made within one year from the deposit to the County Treasurer.

(c) The commissions payable to the public administrator

pursuant to this section and the attorney, if any, for the public administrator for the filing of the application provided for in

(a) or the public administrator's statement in Section (b) this section, and for the performance of any duty or service

connected therewith, are those set forth in Sections 901, 902 and

of this code all 910, /except that, in any cases administered pursuant to this

section, the public administrator shall be entitled to a minimum

commission of ^{three} ~~two~~ hundred fifty dollars ^{\$350} (~~\$250~~).

**

1144. Proceedings; Fees; Sales; Statement by public administrator; Unclaimed balance.

The fee to be allowed to the clerk of the court for the

(a) of this code filing of the application provided for in Section 1143 /shall be

set by the court. ^{minimum} The /commission of the public administrator and

the fee for his-~~er~~-her attorney, if any, for the filing of the or the public administrators statement application, /and the performance of any duty or service connected

therewith shall be 10 percent of the first ^{three} ~~two~~ thousand five

³ hundred dollars (2,500) and, ^{then} /as provided in Sections ^{902, and 910 of this code} ~~901,~~ for

statutory and extraordinary an attorney. the ordinary services of ~~ether~~ administrators and ~~executors~~.

of personal property Sales/may be made, with or without notice, as the public

administrator may elect, and title to the property sold shall

may want to make clear if 2 fees or 1 to PA

Sales of
pass without the need of confirmation by the court.
real property may be made subject to Article 3 (commencing with Section 780)
of Chapter 13, of Division 3 of the Probate Code or pursuant to Article 2
(commencing with Section 591) of Chapter 8 of Division 3 of the Probate Code.
Real Property shall transfer with the public administrators deed.

pursuant to Section 1143 (a) of this code,
The public administrator/shall file with the clerk of the
court a statement showing the property of the decedent that came
the
into/possession of the public administrator and the disposition
made thereof, if any, together with vouchers for all expenditures.
Any money or other property of a decedent remaining in the possession
of the public administrator shall be delivered to the ^{legatees under} decedent's
the decedent's last will, or to the heirs in the absence of a will,
~~heirs-or-beneficiaries,-or-to-other-persons-or-public-entities~~
and, if none, to the State of California after deduction of all
~~entitled-thereto-by-law,-and,-in-the-absence-of-any-such-person-or~~
commissions and additional compensation awarded to the public
~~public-entity,-shall-upon-petition-of-the-public-administrator,-be~~
administrator and the attorney, if any, by the court.
~~distributed-by-the-court-to-the-State-of-California-~~

Upon rendition of a court order distributing money or other
1143(a)
property to the State of California under this section, the public
State State
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.

1144.5. Costs and fees allowed, on subsequent appointment
of another as representative

When a public administrator has taken charge of the estate
of a decedent as provided in Section 1140, costs incurred by
him for the protection of the estate, together with a reasonable
fee for his services of not less-than-twenty-five-dollars-~~(\$25)~~
one thousand dollars (\$1000)
~~nor more than five-hundred-dollars-(\$500)~~ shall be a proper and
legal charge as an expense of administration of the estate of
the decedent. in case of the subsequent appointment of another
person as executor or administrator of the estate.

(Do you want the language in 8007 for PG's changed to the same?)

1143 add paragraph.

** (d) This section of the code does not preclude the public administrator
or the attorney, if any, from filing ^{any} petitions with the court pursuant
to ^{the} other sections of this code when said petition is necessary to the
proper administration of the small estate.