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Fourth Supplement to Memorandum 86-19

Subject: Study L-1040 - Estate and Trust Code (Public Administrators--
SB 2221)

Attached to this supplementary memorandum is a copy of Senate Bill 2221 (Marks) which was introduced in February to implement suggestions of the public administrator. See Second Supplement to Memorandum 86-19.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

SENATE BILL

No. 2221

Introduced by Senator Marks

February 20, 1986

An act to amend Sections 1143, 1144, and 1144.5 of the Probate Code, relating to public administrators.

LEGISLATIVE COUNSEL'S DIGEST

SB 2221, as introduced, Marks. Public administrators.

Existing law requires the public administrator to take charge of and administer decedents' estates for which no executor or administrator has been appointed, under specified conditions. Under existing law, a public administrator may apply to the superior court for authorization for summary disposition of an estate not exceeding \$20,000, excluding the decedent's motor vehicles. However, under existing law, no application to the court is necessary for estates not over \$3,000. Existing law does not authorize the public administrator to sell real property in these proceedings for summary disposition.

This bill would increase to \$50,000, excluding motor vehicles, the maximum size of an estate subject to court-ordered summary disposition by the public administrator. The bill would allow summary disposition by the public administrator without court authorization of estates not exceeding \$10,000. The bill would also authorize the public administrator to sell real property in summary proceedings. The bill would revise the public administrator's fees and make clarifying changes in existing law relating to public administrators.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1143 of the Probate Code is amended to read:

1143. (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 ~~twenty thousand dollars (\$20,000)~~ *fifty thousand dollars (\$50,000)* excluding any motor vehicle owned by the decedent, the public administrator may apply to the superior court of his or her county or a judge thereof for an order permitting ~~him~~ *the public administrator* 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 a sale or collection shall be used to pay commissions to the public administrator *and to the attorney, if any,* and to defray the expenses of the burial of the decedent and the expenses of ~~his~~ *the decedent's* last illness; ~~the~~. The balance, if any, shall be used to pay other claims presented to the public administrator within four months of the above order *pursuant to Section 950* 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 ~~three thousand dollars (\$3,000)~~ *ten thousand dollars (\$10,000)*, the public administrator may, instead of applying to the superior court or judge thereof for an order provided in subdivision (a), *collect all assets belonging to the decedent on the public administrator's statement,* apply ~~such~~ money or ~~the~~

proceeds from the sale of any personal or real property towards the expense of the burial of the decedent, pay other proper claims presented within four months after the public administrator takes possession of the estate pursuant to Section 950, 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 ~~their deposit to~~ with 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 ~~this section~~ subdivision (a) or the public administrator's statement specified in subdivision (b), and for the performance of any duty or service connected therewith, are those set forth in Sections 901, 902, and 910, except that, in ~~any~~ all cases administered pursuant to this section, the public administrator shall be entitled to a minimum commission of ~~two hundred fifty dollars (\$250)~~ three hundred fifty dollars (\$350).

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

SEC. 2. Section 1144 of the Probate Code is amended to read:

1144. The fee to be allowed to the clerk of the court for the filing of the application provided for in subdivision (a) of Section 1143 shall be set by the court. The *minimum* commission of the public administrator and the fee for ~~his or her~~ the attorney, if any, for the filing of the application, or the public administrator's statement and the performance of any duty or service connected therewith shall be 10 percent of the first ~~two thousand five hundred dollars (\$2,500)~~ three thousand five hundred dollars (\$3,500) and, then as provided in Section

901, 902, and 910 for the ~~ordinary~~ statutory and extraordinary services of ~~other administrators an administrator and executors attorney~~. Sales of personal property may be made, with or without notice, as the public administrator may elect, and title to the property sold shall pass without the need of confirmation by the court. ~~The Sales of real property may be made subject to Article 3 (commencing with Section 780) of Chapter 13 or pursuant to Article 2 (commencing with Section 591) of Chapter 8. Real property shall transfer with the public administrator's deed.~~

The public administrator, pursuant to subdivision (a) of Section 1443, shall file with the clerk of the court a statement showing the property of the decedent that came into the 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 ~~decedent's heirs or beneficiaries, or to other persons or public entities entitled thereto by law, and, in the absence of any such person or public entity, shall, upon petition of the public administrator, be distributed by the court to the State of California legatees under the decedent's last will, or to the heirs in the absence of a will, and, if none, to the State of California after deduction of all commissions and additional compensation awarded to the public administrator and the attorney, if any, by the court.~~

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

SEC. 3. Section 1144.5 of the Probate Code is amended to read:

1144.5. When a public administrator has taken charge of the estate of a decedent as provided in Section 1140, costs incurred by him or her for the protection of the estate, together with a reasonable fee for his or her services of not less than twenty-five dollars (\$25) ~~nor more than five hundred dollars (\$500)~~ one thousand dollars (\$1,000) 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.