

Memorandum 86-26

Subject: Study L - Assembly Bill No. 2625

We expect to have Assembly Bill 2625 available in amended form in time for the March meeting. We will send you a copy of the amended bill as soon as it is available.

The staff is aware of several additional amendments to Assembly Bill 2625 that we recommend be made to the bill. Because we will be working with the amended bill at the meeting, we will describe the amendments sufficiently so that you can understand the amendment without need to refer to the bill itself.

COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION

Requirement that legal description of real property be included in petition or affidavit

The staff believes that it would be desirable to make clear that a legal description of the property is required to be included in the petition for a court order determining the succession to real property. This suggestion was made by a title company representative who believed that the clarification would be useful to provide clear titles. We recommend the following change in Section 13152:

13152. (a) The petition . . . shall state all of the following:

* * *

A legal description of the particular item of property in this state which the petitioner alleges is real property of the decedent passing to the petitioner and the interest of the decedent therein.

We also recommend that the comparable provision in the affidavit procedure for real property of small value be similarly revised. Specifically, we recommend that the following change be made in Section 13200:

13200. (a) No sooner than six months after the death of a decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file . . . an affidavit stating all of the following:

* * *

(3) A legal description of the real property and the interest of the decedent therein.

PRORATION OF TAXES

§ 20110. Proration among persons interested in estate. Language has been added to Section 20110 to the effect that if federal law mandates a specific manner of proration of estate taxes, proration of the California estate tax must be done in the same manner. This language was developed by the staff and Ken Klug in response to a problem raised by the State Bar Executive Committee relating to proration of taxes attributable to a QTIP trust. A similar change has been made in Section 20210, the comparable generation-skipping transfer tax provision.

§ 20116. Where property not in possession of personal representative. Subdivision (c) of this section provides that if a person is forced to pay more than his or her prorated share of taxes because the personal representative is unable to collect the share prorated to someone else, the person forced to pay more has a reimbursement right from the other person, enforceable directly or through the personal representative. The California Bankers Association asks whether the personal representative may decline to pursue the reimbursement right, and if so whether the personal representative may be required to pursue the right.

The statute and Comments are silent on this point, but as a matter of policy the staff does not believe it would be wise to require the personal representative to act where it would be inconvenient to do so. The staff would qualify the statute by providing enforcement through the personal representative "in the discretion of the personal representative."

§ 20122. Notice of hearing. Notice of a proration hearing for estate taxes must be given 10 days before the hearing, whereas notice of a proration hearing for generation-skipping transfer taxes must be given 30 days before the hearing. The reason for this difference in timing is that the 10 day estate tax notice is comparable to the other 10 day probate notice requirements, whereas the 30 day generation-skipping transfer tax notice is comparable to the other 30

day trust notice requirements. Chuck Collier wonders whether this difference in notice is necessary. The staff's view is that the difference is not necessary, but that it will be less confusing to probate practitioners to have the same 10-day notice in probate proceedings.

Chuck Collier also raises the question whether parties to a proration proceeding have the right to demur or answer prior to the hearing, and whether nonparties may intervene. The answer to both these questions is yes, since the general rules governing civil actions will apply to the proration proceeding by virtue of Probate Code Section 1233. The staff will add a specific cross-reference to this provision in the Comment.

§ 20123. Court order to effectuate proration. An appeal may be taken from the court proration order. As an organizational matter, the California Bankers Association asks whether it would be better to add the appeal provision to the general appeal listing of Probate Code Section 1240. At this point the staff believes it would be better to leave the appeal provision in the proration statute, and when we redraft the general Probate Code appeal provisions we will review this matter for consistency of treatment.

Respectfully submitted,

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