

First Supplement to Memorandum 86-36

Subject: Study L-1029 - Estate and Trust Code (Distribution of Estate--
comments on draft)

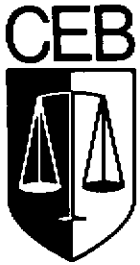
Attached to this memorandum is a letter from Jeff Strathmeyer commenting on the following provisions of the draft tentative recommendation relating to distribution of the estate:

§ 8706. After-discovered and other property not covered by order. Mr. Strathmeyer notes potential problems in the operation of the statutory omnibus clause. He suggests as an alternative that the decree of final distribution should be required to include an after-discovered property clause.

§ 8720. Time for petition. Mr. Strathmeyer objects to changing the two month preliminary distribution time to four months. The staff notes with some embarrassment that although the preliminary part and Comment reflect this change, the change is not implemented in the statute language.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary



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April 2, 1986

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California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Re: Memorandum 86-36; Study L-1029
(Distribution of Estate)

Dear Nat:

1) The procedure for making preliminary distributions after two months should be retained. There are situations in which it is very important to distribute a unique problem asset as fast as possible in order to avoid disputes. (Are you going to have a probate judge select the racing schedule of a race horse?) The creditors are protected by a bond; why eliminate this flexibility?

2) Proposed Section 8706 is an invitation to trouble. Suppose, for example, that the Will gave all tangible personal property to X and the residue to Y. Further suppose that the gift to X was distributed in a preliminary distribution, with the result that there is no provision in the decree of final distribution for the distribution of tangible personal property. What do you do under 8706 if you later discover more tangible personal property and the final decree gives everything to Y? Perhaps a better approach here is to require after-discovered property clauses in the decree for final distribution.

Very truly yours,

Jeffrey A. Dennis-Strathmeyer

JAD-S:dp