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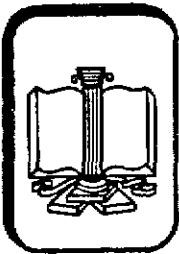
First Supplement to Memorandum 86-44

Subject: Study L - Assembly Bill 2625 - Comprehensive Probate Bill

The Commission has received the attached letter concerning Commission recommended legislation included in Assembly Bill 2625. The letter concerns the affidavit procedure for collection or transfer of personal property and is self-explanatory.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

May 7, 1986

California Law Revision Commission
4000 Middlefield Rd. #D2
Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouilly, Executive Secretary

Re: Recommendations Relating to Probate Law, December, 1985

Dear Mr. DeMouilly:

Thank you for sending me the Disposition of Estate Without Administration as set forth in the recommendations of December, 1985.

I am concerned about proposed section 13108 because subdivision (a) appeared to preclude the affidavit proceeding if the personal representative or his attorney determines that he would rather use the court proceeding. In lieu of your proposal, I would suggest the following:

"Section 13108. When this chapter must be used; later probate proceeding not precluded.

13108.(a) Instead of a court proceeding, proceedings under this chapter must be used unless the petitioner shows good cause why a court proceeding is necessary to probate the decedent's will or administer the decedent's estate. Among other things, a representation that a transfer agent will not recognize proceedings under this chapter or that administration is necessary to enforce payment of decedent's debts is good cause for filing a court proceeding instead of proceeding under this chapter.

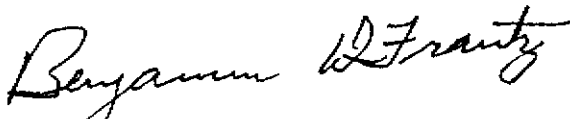
(b) Payment, delivery, or transfer of a decedent's property pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate if the necessity therefor arises."

California Law Revision Commission
May 7, 1986
Page Two

For your convenience I enclose a copy of proposed section 13108.

With best regards, I am

Very truly yours,



BENJAMIN D. FRANTZ
Professor of Law

BDF:bk
enc.

cc: Honorable William A. White

1046

DISPOSITION OF ESTATE

§ 13108. No pending probate proceeding; later probate proceeding not precluded

13108. (a) The procedure provided by this chapter may be used only if no proceeding for the administration of the decedent's estate is pending or has been conducted in this state.

(b) Payment, delivery, or transfer of a decedent's property pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate.

Comment. Subdivision (a) of Section 13108 is a new provision that is consistent with the last sentence of former Probate Code Section 631. Subdivision (b) is drawn from the last sentence of former Probate Code Section 631. See generally *Brezzo v. Brangero*, 51 Cal. App. 79, 81, 196 P. 87 (1921); Evans, *Comments on the Probate Code of California*, 19 Calif. L. Rev. 602, 607 (1931); Broll, *Summary Administration*, in 1 California Decedent Estate Administration § 3.14, at 124 (Cal. Cont. Ed. Bar 1971).