

#L-1037

ns12

04/24/86

Memorandum 86-47

Subject: Study L-1037 - Estate and Trust Code (Estate Management--
summary resolution of disputes)

Memorandum 86-38 includes a draft of Sections 9620 and 9621, relating to summary resolution of disputes involving the estate. The Commission has previously done some work on these provisions in connection with disputed creditor claims. Attached to this memorandum are revised Sections 9620 and 9621, drafted to reflect Commission decisions made in connection with creditor claims. The revised provisions supersede the provisions included in Memorandum 86-38.

Respectfully submitted,

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Assistant Executive Secretary

04/24/86

Exhibit 1

Article 3. Summary Determination of Disputes§ 9620. Submission of dispute to commissioner, judge pro tempore, or probate judge

9620. If there is a dispute between the personal representative and a third person concerning a claim against the decedent or the estate, the personal representative may do either of the following:

(a) Enter into an agreement in writing with the third person to refer the dispute to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee has the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without pleadings or discovery. The decision of the designated person shall be subject to Section 632 of the Code of Civil Procedure (statement of decision). Judgment shall be entered on the decision and shall be as valid and effective as if rendered by a judge of the court in an action against the personal representative commenced by ordinary process.

(b) Enter into an agreement in writing with the third person that a judge of the court, pursuant to the agreement and with the written consent of the judge, both filed with the clerk, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

Comment. Section 9620 restates and generalizes paragraph (2) of former Probate Code Section 718. Former Section 718 was limited to claims filed or presented, but Section 9620 applies to any dispute. Former Section 718 required a written decision; this requirement is replaced with the statement of decision provisions of Code of Civil Procedure Section 632. Summary proceedings under Section 9620 of course do not include a jury trial. See Section 7204 (trial by jury). The special provisions of former Section 718 that applied particularly to claims filed or presented are continued in Section 9307.

CROSS-REFERENCES

Definitions

Clerk § 27
Court § 29
Order § 53
Person § 56
Personal representative § 58

COMPARABLE PROVISION

Guardianship-conservatorship § 2405

Note. Conforming changes will be made in Section 2405 (guardianship and conservatorship).

§ 9621. Submission of dispute to arbitration

9621. If there is a dispute between the personal representative and a third person concerning a claim by or against the decedent or the estate, the personal representative may enter into an agreement in writing with the third person to submit the dispute to arbitration under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure. Such an agreement is not effective unless it is first approved by the court and a copy of the approved agreement is filed with the court.

Comment. Section 9621 is a new provision. The section is drawn from Section 2406 (guardianship-conservatorship law). An arbitration award pursuant to this section is binding.

CROSS-REFERENCES

Definitions

Court § 29
Person § 56
Personal representative § 58

COMPARABLE PROVISION

Guardianship-conservatorship § 2406