

04/16/86

Memorandum 86-50

Subject: Study L-1029 - Estate and Trust Code (Closing Estate
Administration--draft of tentative recommendation)

Attached to this memorandum is a draft in tentative recommendation form of the provisions relating to closing estate administration. The draft has been revised in conformance with Commission decisions made at the March 1986 meeting.

Respectfully submitted,

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CLOSING ESTATE ADMINISTRATION

The proposed law continues existing procedures for closing administration of the estate and discharging the personal representative, with a few improvements.

Receipt of distributee. Before the personal representative may be discharged the personal representative must show the court that the estate property has been properly distributed.¹ The proposed law replaces this requirement with a procedure by which the personal representative simply files receipts at or before the time of the petition for discharge. In the case of real property, identification of the record location of the court order of distribution or the trustees deed serves as a sufficient receipt.²

Discharge procedure. The actual discharge of the personal representative after all estate property has been distributed pursuant to court order is a formality. The proposed law expedites the procedure by enabling discharge on ex parte application.

The proposed law also eliminates the existing requirement for production of satisfactory vouchers that the personal representative has performed all necessary acts.³ This requirement is largely ignored in practice. The personal representative's petition includes the same information and must be verified. In addition, there is a four year period following discharge during which the sureties on the bond of the personal representative remain liable.⁴

¹Prob. Code § 1066.

²The recordation procedure replaces the provision of existing Section 1065 for a life tenant's acknowledgment of the life tenancy to the remainderman.

³Prob. Code § 1066.

⁴See discussion, supra, relating to "Bond of personal representative", under "Opening Estate Administration."

PART 11. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

- § 12200. Time required for closing or status report
- § 12201. Report of status of administration
- § 12202. Failure to make petition or report
- § 12203. Continuation of administration to pay family allowance
- § 12204. Failure of personal representative to comply with order
- § 12205. Sanction for failure to timely close estate
- § 12206. Testamentary limitation of time for administration

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

- § 12250. Receipt for distributed property
- § 12251. Order of discharge
- § 12252. Discharge without administration
- § 12253. Administration after discharge

[CHAPTER 3. STATUTES OF LIMITATION/EFFECT OF DISCHARGE]
[RESERVED]

PART 10. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

§ 12200. Time required for closing or status report

12200. The personal representative shall, not later than the following times, either petition for an order for final distribution of the estate or make a report of status of administration:

(a) In an estate not required to file a federal estate tax return, within one year after the date of issuance of letters.

(b) In an estate required to file a federal estate tax return, within 18 months after the date of issuance of letters.

Comment. Section 12200 restates the first sentence of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Verification required § 7203

§ 12201. Report of status of administration

12201. If a report of status of administration is made pursuant to Section 12200:

(a) The report shall show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate.

(b) The report shall be filed with the court. Notice of hearing of the report shall be given [to persons then interested in the estate] in the manner provided in Section [1200.5].

(c) Upon the hearing of the report, the court may order either of the following:

(1) That the administration of the estate continue for the time and upon the terms and conditions that appear reasonable, if the court determines that continuation of administration is in the best interests of the estate or of interested persons.

(2) That the personal representative must petition for final distribution.

Comment. Section 12201 restates the second, third, and fourth sentences of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

Verification required § 7203

Note. The bracketed language will be reviewed in connection with general notice provisions.

§ 12202. Failure to make petition or report

12202. (a) If the personal representative does not make a petition or report within the time required by this chapter or prescribed by the court, the court may, upon petition of any interested person or upon its own motion, cite the personal representative to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) Upon the hearing of the citation, the court may either order the administration of the estate to continue, as provided in Section 12201, or order the personal representative to petition for final distribution.

Comment. Section 12201 restates the second paragraph of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

§ 12203. Continuation of administration to pay family allowance

12203. (a) For purposes of this chapter, continuation of the administration of the estate in order to pay a family allowance is not in the best interests of the estate or interested persons unless the court determines both of the following:

(1) The family allowance is needed by the recipient to pay for necessities of life, including education so long as pursued to advantage.

(2) The needs of the recipient for continued family allowance outweigh the needs of the decedent's beneficiaries whose interests would be adversely affected by continuing the administration of the estate for this purpose.

(b) Nothing in this section shall be construed to authorize continuation of a family allowance beyond the time prescribed in Section 6543.

Comment. Subdivision (a) of Section 12203 restates former Probate Code Section 1026 without substantive change. Subdivision (b) makes clear the interrelation between this section and Section 6543 (termination of family allowance). Nothing in Section 12203 limits the power of the court to order a preliminary distribution of the estate.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Court § 29

Interested person § 48

Note. Subdivision (b) is added in response to a question raised at the March 1986 Commission meeting, relating to termination of a family allowance in an insolvent estate after one year.

§ 12204. Failure of personal representative to comply with order

12204. Failure of the personal representative to comply with an order made under this chapter is ground for removal from office.

Comment. Section 12204 restates the third paragraph of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Order § 53

Personal representative § 58

§ 12205. Sanction for failure to timely close estate

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, upon the hearing for final distribution or for an allowance upon the commissions of the personal representative or upon the fees of the attorney, reduce the commissions or fees by an amount the court deems appropriate, regardless of whether the fees or commissions otherwise allowable under the provisions of Sections [901

and 910] would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative or attorney and was not in the best interest of the estate or interested persons. In making a determination pursuant to this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

Comment. Section 12205 restates the fourth paragraph of former Probate Code Section 1025.5, with the addition of a direction to the court to consider prior delays in setting sanctions.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

§ 12206. Testamentary limitation of time for administration

12206. A limitation in a will of the time for administration of an estate is directory only and does not limit the power of the personal representative or the court to continue administration of the estate beyond the time limited if the continuation is necessary.

Comment. Section 12206 restates former Probate Code Section 1025 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Will § 88

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

§ 12250. Receipt for distributed property

12250. (a) The personal representative shall obtain the receipt of the distributee for all property of the estate distributed by the personal representative. In the case of real property, the personal representative shall record the court order for distribution or the personal representative's deed or both in the county in which the real property is located, and recordation of the order or deed is deemed to be a receipt for the property.

(b) The personal representative shall file receipts for all property of the estate at the time of or before the petition for discharge. In the case of real property, the petition shall identify the record location of the court order for distribution or the personal representative's deed.

Comment. Section 12250 is new. Failure of the personal representative to record the court order for distribution of real property or the personal representative's deed does not affect title of the distributee.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Personal representative § 58

Property § 62

Real property § 68

§ 12251. Order of discharge

12251. When the personal representative has complied with the terms of the final order for distribution and has filed the appropriate receipts, the court shall, upon ex parte petition therefor, make an order discharging the personal representative from all liability incurred thereafter.

Comment. Section 12551 restates former Probate Code Section 1066. The provision for production of vouchers is not continued, and the petition is made ex parte. The estate is fully administered for purposes of this section when all sums of money due from the personal representative have been paid, all property of the estate has been distributed to the persons entitled pursuant to court order, and all the acts lawfully required of the personal representative have been performed. As to after-discovered property, see Section 8706 (after-discovered and other property not covered by order).

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Personal representative § 58

Verification required § 7203

§ 12252. Discharge without administration

12252. (a) At any time after appointment of a personal representative and whether or not letters have been issued, the personal representative may sign and file a petition setting forth the

fact that it appears there is no property of any kind belonging to the estate and subject to administration, and praying for the termination of further proceedings and for discharge of the personal representative.

(b) If it appears to the satisfaction of the court upon the hearing that the facts stated in the petition are true, the court shall make an order terminating the proceeding and discharging the personal representative.

Comment. Section 12252 restates former Probate Code Section 1068 without substantive change. Proceedings may be taken under this section without the return of an inventory provided for by [Chapter 9 (commencing with Section 600) of Division 3]. See subdivision (a) ("at any time").

CROSS-REFERENCES

Definitions

Court § 29

Letters § 52

Order § 53

Personal representative § 58

Property § 62

Verification required § 7203

NOTE. Notice of hearing requirements are being reviewed in connection with this section. It would seem that the same notice provisions should apply as for a petition for final distribution. The extent to which another person should be able to act for the personal representative will be governed by general provisions.

§ 12253. Administration after discharge

12253. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order and manner as is directed in relation to original appointment, except that the person who served as personal representative at the time of the order of discharge has priority.

(b) If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be served upon the State Controller at the time and in the manner prescribed by Section [1200].

Comment. Section 12253 restates former Probate Code Section 1067 without substantive change. As to after-discovered property, see Section 8706 (after-discovered and other property not covered by order).

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Person § 56

Personal representative § 58

NOTE. Notice requirement is being reviewed. Status of state and county treasurers is being reviewed.

[CHAPTER 3. STATUTES OF LIMITATION/EFFECT OF DISCHARGE]

[TO BE DRAFTED]

DISPOSITION OF REPEALED PROVISIONS

Probate Code § 1025 (repealed)

Comment. Former Section 1025 is restated without substantive change in Section 12206 (testamentary limitation of time for administration).

Probate Code § 1025.5 (repealed)

Comment. The first sentence of the first paragraph of former Section 1025.5 is restated without substantive change in Sections 12200 (time required for closing or status report), 7203 (verification required), and 12201 (report of status of administration). The substance of the second, third, and fourth sentences is restated without substantive change in Section 12201 (report of status of administration).

The second paragraph is restated without substantive change in Section 12202 (failure to make petition or report). The third paragraph is restated without substantive change in Section 12204 (failure of personal representative to comply with order). The fourth paragraph is restated without substantive change in Section 12205 (sanction for failure to timely close estate).

Probate Code § 1026 (repealed)

Comment. Former Section 1026 is continued without substantive change in Section 12203 (continuation of administration to pay family allowance).

Probate Code § 1065 (repealed)

Comment. Former Section 1065 is not continued. For the receipt of the distributee, see Section 12250 (receipt for distributed property).

Probate Code § 1066 (repealed)

Comment. Former Section 1066 is restated without substantive change in Section 12251 (order of discharge), except that the provision for production of vouchers is not continued and the petition is made ex parte.

Probate Code § 1067 (repealed)

Comment. Former Section 1067 is restated without substantive change in Section 12253 (administration after discharge).

Probate Code § 1068 (repealed)

Comment. Former Section 1068 is restated without substantive change in Sections 12252 (discharge without administration), 7203 (verification required), and 7202 (clerk to set matter for hearing).