

Memorandum 86-56

Subject: Study L-1033 -- Estate and Trust Code (Determining Class
Membership)

Attached to this memorandum is a draft of a tentative recommendation relating to determining class membership. The statute and comments and the comments to repealed sections are a revised version of material considered at the March meeting. The explanatory text has not been considered before.

We will probably combine this material with some other short tentative recommendations when it is sent out for comment.

Respectfully submitted,

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Staff DraftTENTATIVE RECOMMENDATION
Relating to
DETERMINING MEMBERS OF CLASS

Existing law provides a procedure to determine the membership of a class described as heirs, heirs of the body, issue, or children.¹ This procedure is not available to determine class membership if the property passes by intestate succession.² The decree of the court is prima facie evidence of the facts determined and protects persons dealing with the petitioner in good faith and without notice of conflicting interests.³

The new code continues this procedure, but makes it available to determine membership in any class, not only classes described as heirs, heirs of the body, issue, or children. The need to obtain a court determination of class membership may be just as great in cases where, for example, the class is described in terms of family membership, such as relatives or next of kin, or by some other general class description. The new code also makes the procedure available in cases where the property passes by intestate succession and thus covers cases where a person's right to the property has not been determined during administration.

1. Prob. Code §§ 1190-1192.

2. Prob. Code § 1190.

3. Prob. Code § 1192. The proceeding determines a person's identity within the described class; it does not determine the legal right to property and does not appear to provide a forum for determination of conflicting claims to estate property. See Magaram, *Determining Interests in Estate Distribution*, in 2 California Decedent Estate Administration § 24.10, at 1048 (Cal. Cont. Ed. Bar 1975).

§ 322. Notice of hearing

322. (a) The clerk shall set the petition for hearing by the court.

(b) The clerk shall give notice of the hearing in the manner prescribed in Section [1200].

(c) The petitioner shall cause notice of the hearing to be given in the manner prescribed in Section [1200.5].

Comment. Section 322 continues former Probate Code Section 1191 without substantive change.

Note. The notice provisions are under review. Subdivision (a) may not be necessary if it is made a general provision applicable to this part of the code.

§ 323. Responsive pleading

323. At any time before the hearing, any person interested in the property may contest the petition by an answer that denies any of the matters included in the petition.

Comment. Section 323 continues the first sentence of former Probate Code Section 1192 without substantive change.

§ 324. Hearing and order

324. (a) The court shall hear the evidence offered by the petitioner and by any contestant and shall make an order determining the membership of the petitioner in the class.

(b) The court order is prima facie evidence of the facts determined and is conclusive in favor of any person acting in reliance on the order in good faith without notice of any conflicting interest.

Comment. Section 324 restates the second and third sentences of former Probate Code Section 1192 without substantive change.

CROSS-REFERENCES

Definitions

Order § 53

PART 10. DETERMINING IDENTITY OF CLASS MEMBERS

§ 320. Proceeding authorized

320. (a) If title to property vests in a class, a person claiming to be a member of the class may commence proceedings under this part to determine the person's identity as a member of the class.

(b) As used in this section, "person claiming to be a member of the class" includes the successor in interest of the person and the personal representative of the person or successor in interest.

Comment. Subdivision (a) of Section 320 supersedes the first portion of former Section 1190. Unlike former Probate Code Sections 1190-1192, the procedure of this part is not limited to cases where the class is described as heirs, heirs of the body, issue, or children. This procedure is available to determine whether a person is a member of a class, whereas former law did not apply where title had vested by the laws of succession. For other procedures to determine class members, see, e.g., Sections [1080] (determination of heirship in proceedings for administration of estate), 17200(b)(4) (determination of trust beneficiaries).

Subdivision (b) restates part of former Probate Code Section 1190 without substantive change.

§ 321. Petition

321. (a) Proceedings under this part shall be commenced in the superior court of the county in which the property or any part of the property is situated.

(b) Proceedings under this part shall be commenced by filing a verified petition that includes all of the following information:

(1) The basis of the petitioner's claim of title.

(2) A description of the property.

(3) So far as known to the petitioner, the names, ages, and mailing addresses of the members of the class whose identity is sought to be determined. If any member is dead or if the mailing address of any member is unknown, the petition shall state these facts.

Comment. Section 321 restates the last part of former Section 1190 without substantive change, but applies to members of any class, consistent with Section 320. In addition, the petitioner is required to supply the mailing addresses, rather than the residences, of class members.

Note. The verification requirement may be generalized.

COMMENTS TO REPEALED SECTIONS

Probate Code § 1190 (repealed). Petition to determine members of class

Comment. The first part of former Section 1190 is restated without substantive change in Estate and Trust Code Section 320 (proceeding authorized). The last part is restated without substantive change in Estate and Trust Code Section 321 (petition).

Probate Code § 1191 (repealed). Setting for hearing; notice

Comment. Former Section 1191 is continued without substantive change in Estate and Trust Code Section 322 (notice of hearing).

Probate Code § 1192 (repealed). Hearing; conclusiveness of order

Comment. The first sentence of former Section 1192 is continued without substantive change in Estate and Trust Code Section 323 (responsive pleading). The second and third sentences are restated without substantive change in Estate and Trust Code Section 324 (hearing and order).