

Memorandum 86-58

Subject: Study L-655 - Estate and Trust Code (Inventory and
Appraisal--draft statute)

Attached to this memorandum is a draft of the provisions governing inventory and appraisal, including provisions relating to the probate referee. The Commission has previously made a number of policy decisions concerning the probate referee, which are incorporated in this draft.

Our objective is to review the draft in order to make any necessary substantive and technical changes, so that a tentative recommendation can be prepared on this topic to distribute for comment. Policy questions are raised in some of the Notes following the sections in the draft.

Respectfully submitted,

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DIVISION 2. GENERAL PROVISIONS
PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

- § 400. Appointment by Controller
- § 401. Qualifications for appointment
- § 402. Qualification examination
- § 403. Term of office of probate referee
- § 404. Standards for probate referee
- § 405. Revocation of appointment of probate referee
- § 406. Termination of authority
- § 407. Political activities of probate referee

CHAPTER 2. POWERS OF PROBATE REFEREE

- § 450. General powers
- § 451. Compelling appearance
- § 452. Examination, testimony, and production of documents
- § 453. Contempt

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS
PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

- § 8800. Inventory and appraisal required
- § 8801. Supplemental inventory and appraisal
- § 8802. Form of inventory and appraisal
- § 8803. Notice of filing of inventory and appraisal
- § 8804. Objection to inventory and appraisal
- § 8805. Failure to timely file inventory and appraisal

CHAPTER 2. INVENTORY

Article 1. General Provisions

- § 8850. Contents of inventory
- § 8851. Debts and demands against personal representative
- § 8852. Discharge or devise of debts and demands
- § 8853. Oath of personal representative

Article 2. Discovery of Property of Decedent

- § 8870. Subpoena to appear and be examined concerning decedent's property
- § 8871. Examination
- § 8872. Subpoena to appear and account
- § 8873. Embezzlement, concealment, smuggling, or fraudulent disposition of property in estate

CHAPTER 3. APPRAISAL

Article 1. Procedure

- § 8900. Appraisal by personal representative, probate referee, and independent expert
- § 8901. Appraisal by personal representative
- § 8902. Appraisal by probate referee

- § 8903. Waiver of appraisal by probate referee
- § 8904. Appraisal by independent expert
- § 8905. Verification of appraisal
- § 8906. Appraisal report, backup data, and justification of appraisal

Article 2. Designation and Removal of Probate Referee

- § 8920. Designation by court
- § 8921. Designation at request of personal representative
- § 8922. Discretion not to designate person as probate referee
- § 8923. Disqualification of probate referee
- § 8924. Removal of probate referee

Article 3. Time For Probate Referee Appraisal

- § 8940. Time required for appraisal or status report
- § 8941. Report of status of appraisal
- § 8942. Failure to make appraisal or report
- § 8943. Sanction for failure to timely appraise property

Article 4. Commission and Expenses of Probate Referee

- § 8960. Payment of commission and expenses
- § 8961. Amount of commission and expenses
- § 8962. Maximum and minimum commissions
- § 8963. Division of commission between referees

DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

Note. The provisions relating to probate referees (as opposed to the provisions on appraisal of estates) have been located in Division 2 (General Provisions) rather than Division 7 (Administration of Estates of Decedents). The probate referees may be involved in appraisal of guardianship and conservatorship estates and appraisal of property that is disposed of without administration, as well as appraisal of probate estates.

In this connection, the State Bar Executive Committee has suggested that the probate referees now be called "Estate Appraisers", a name that more accurately reflects their function. It would also correspond with the name change of the Probate Code to the Estate and Trust Code. The Commission has deferred decision on this matter pending further input from the Probate Referees Association.

CHAPTER 1. APPOINTMENT AND REVOCATION

§ 400. Appointment by Controller

400. (a) The State Controller shall appoint at least one person in each county to act as a probate referee for the county.

(b) If there are fewer than three regularly qualified applicants to serve in a county, the State Controller may designate a probate referee from another county or in the event there is no regularly qualified applicant, make an interim appointment, to serve until the vacancy has been filled by a regularly qualified applicant.

Comment. Subdivision (a) of Section 400 continues a portion of the first sentence of the first paragraph of former Probate Code Section 1305 without change. Subdivision (b) continues the third sentence of the first paragraph without substantive change.

§ 401. Qualifications for appointment

401. (a) Appointment shall be from among persons passing a qualification examination administered by the State Personnel Board. A person who passes the examination is eligible for appointment for a period of five years from the date of the examination.

(b) Appointment shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation.

Comment. Subdivision (a) of Section 401 continues a portion of the first sentence of the first paragraph and the fifth sentence of the second paragraph of former Probate Code Section 1305 without substantive change. Subdivision (b) continues the second sentence of the first paragraph of former Probate Code Section 1305 without change.

§ 402. Qualification examination

402. (a) The qualification examination for applicants for appointment as a probate referee shall be held at such times and places within the state as the State Controller determines.

(b) The State Controller shall contract with the State Personnel Board to administer the qualification examination. Administration of the examination shall include:

- (1) Development of standards for passage of the examination.
- (2) Preparation of examination questions.
- (3) Giving the examination.
- (4) Scoring the examination.

(c) Each applicant shall pay a fee established by the State Personnel Board for taking the qualification examination. The State Personnel Board shall transmit to the State Controller a list of candidates who have received a passing score in the examination. The list is a public record.

Comment. Section 402 continues former Probate Code Section 1306 without substantive change.

§ 403. Term of office of probate referee

403. (a) The term of office of a probate referee is four years, expiring June 30. A probate referee is eligible for reappointment.

(b) If the State Controller increases the number of probate referees in a county, the State Controller shall stagger the terms of the new appointees so that one-quarter or as close to one-quarter as possible of the terms of the probate referees in that county expire on June 30 of each succeeding year.

Comment. Section 403 continues the second, third, and sixth sentences of the second paragraph of former Probate Code Section 1305 without substantive change.

Note. Existing law provides that, "Once appointed, a probate referee remains eligible for reappointment." Does this mean the referee is eligible for reappointment while still serving as referee,

or for some years afterwards? Suppose 10 years has elapsed since the referee's term expired--may the referee be reappointed without taking another qualification examination?

§ 404. Standards for probate referee

404. (a) The State Controller may establish and amend standards of training, performance, and ethics of probate referees. The standards are a public record.

(b) The State Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training, performance, or ethics established under subdivision (a). The State Controller may revoke an appointment under this subdivision without notice or a hearing, but the revocation is subject to review by writ of mandate to a court of competent jurisdiction.

Comment. Subdivision (a) of Section 404 continues former Probate Code Section 1307 without substantive change. Subdivision (b) continues former Section 1308(a) without substantive change. Revocation of appointment under subdivision (b) is independent of revocation under Section 405 (revocation of appointment at pleasure of Controller).

§ 405. Revocation of appointment of probate referee

405. Notwithstanding Section 404, the State Controller may revoke the appointment of a person to act as a probate referee at the pleasure of the State Controller. Under this section, the State Controller may revoke the appointment of not more than 10 percent of the probate referees in each county in any one calendar year, but may revoke the appointment of at least one probate referee in each county in any one calendar year.

Comment. Section 405 continues the first sentence of former Probate Code Section 1308(b) without substantive change. Revocation of appointment under Section 405 is independent of revocation under Section 404 (standards for probate referee).

§ 406. Termination of authority

406. The authority of a person to act as a probate referee ceases immediately upon the expiration of the person's term of office, revocation of the person's appointment, or other termination pursuant to law.

Comment. Section 406 continues former Probate Code Section 1310 without substantive change. Other termination pursuant to law includes resignation.

§ 407. Political activities of probate referee

407. (a) A probate referee or any person who is an applicant for or seeking an appointment as a probate referee shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner concerned in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, contribution, or political service for any campaign for the office of State Controller.

(2) Any assessment, subscription, or contribution to any party or candidate exceeding two hundred dollars (\$200) in any one year for any campaign for any partisan public office of this state.

(b) A violation of this section is a misdemeanor.

(c) The State Controller shall not appoint as a probate referee any person who violates this section within the two-year period preceding the date of the appointment, and any such appointment is void. However, all acts not otherwise invalid performed by the person before termination of the person's appointment are valid.

Comment. Subdivisions (a) and (b) of Section 407 restate former Probate Code Section 1311 without substantive change. The two hundred dollar limitation of paragraph (a)(2) does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited by paragraph (a)(1).

Subdivision (b) restates former Probate Code Section 1312 without substantive change, except that the transitional provision is omitted because it is no longer necessary.

CHAPTER 2. POWERS OF PROBATE REFEREE

Note. Are the powers provided in this chapter (issuance of subpoenas, taking testimony, citing for contempt) actually used, or are they a relic of the inheritance tax function of the probate referee?

§ 450. General powers

450. Upon designation by the court, the probate referee has all the powers of a referee of the superior court and all other powers provided in this chapter.

Comment. Section 450 continues subdivision (b) of former Probate Code Section 1301 without substantive change.

CROSS-REFERENCES

Definitions
Court § 29

§ 451. Compelling appearance

451. For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, any interested person, or any other person the referee has reason to believe has knowledge of the property.

Comment. Section 451 restates subdivision (a) of former Probate Code Section 1301 and former Probate Code Section 1302, with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates.

CROSS-REFERENCES

Definitions
Interested person § 48
Person § 56
Personal representative § 58
Property § 62

§ 452. Examination, testimony, and production of documents

452. The probate referee may examine and take the testimony under oath of any person appearing before the referee, or require the person to produce any document in the person's possession or control, concerning the value of property in the estate.

Comment. Section 452 continues former Probate Code Section 1303, with the addition of the reference to production of documents. See Section 453 (contempt).

CROSS-REFERENCES

Definitions
Person § 56
Property § 62

§ 453. Contempt

453. Disobedience of a subpoena issued by the probate referee requiring appearance before the referee for the purpose of examination, testimony, or production of documents concerning the value of property in the estate is a contempt of the court that appointed the referee.

Comment. Section 453 restates former Probate Code Section 1304 without substantive change. For general provisions governing enforcement of subpoenas, see Code Civ. Proc. § 1985 et seq. See also Section 7200 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

§ 8800. Inventory and appraisal required

8800. Within three months after letters are issued to a general personal representative, or within such further time as the court for reasonable cause may allow, the personal representative shall file with the clerk an inventory and appraisal of the fair market value of the property in the estate of the decedent at the time of the decedent's death that has come into the possession or knowledge of the personal representative.

Comment. Section 8800 restates the first portion of the first sentence of former Probate Code Section 600 without substantive change. See also Section 7061 (actions in chambers). Section 8800 also generalizes the "fair market value" standard from various places in former law.

The inventory and appraisal procedure provided in this chapter applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

CROSS-REFERENCES

Definitions

Clerk § 27

Court § 29

Letters § 52

Personal representative § 58

Note. We have a letter from Luther J. Avery stating, "Even if there is independent administration and avoidance of court-supervised administration which I advocate, there is still a need for an inventory. However, what is needed is more time for its preparation and a statutory procedure for waiver of accounting and an inventory." Mr. Avery does not outline the situations he has in mind where waiver of an inventory would be appropriate. As to additional time, see the discussion immediately below.

The requirement of existing law that the inventory be filed within three months after appointment of the personal representative is the subject of substantial criticism. The Commission has received comments from lawyers that the three month period is unrealistically short, that more time is needed, that the period is ignored more than it is observed, and that as a practical matter a partial inventory is simply filed to comply with the three month requirement.

Specific suggestions on this point are that the requirement be either given some teeth or removed (Commissioner Stodden), that the time be extended to the later of six months after appointment of the personal representative or the date the federal estate tax return is due (Los Angeles County Bar), to ninth months after the date of death (when the federal estate tax return is normally due) (State Bar), to a "reasonable time" after appointment (State Bar/LA County Bar), or to the time of the petition for distribution (Commissioner Stodden).

The Commission has already acted in this area to some extent by making a decision that if the probate referee fails to return the appraisal to the personal representative within 90 days after the inventory is delivered to the referee, a status report must be filed and the referee is subject to reduction of commission or removal. See Section 8940. There is a small conflict between the requirement of Section 8940 that the probate referee return the appraisal to the personal representative within 90 days after the personal representative delivers the inventory to the referee and the requirement of Section 8800 that the appraisal be filed within 3 months after letters are issued to the personal representative.

A related matter that would be affected by any change in the law on the time the inventory and appraisal must be filed is that Revenue and Taxation Code Section 480 requires the personal representative, at the time the inventory and appraisal is filed with the court, to file a change in ownership statement with the recorder or assessor of each county in which the decedent owned real property. The State Bar suggests that this is inappropriate since the change of ownership does not in fact take place until distribution. The Los Angeles County Bar takes the position that it is advisable to require the filing of the change in ownership form as early in estate administration as is reasonable, since ownership of real property changes on death "subject to administration" and since new property tax provisions call for reassessment at the time of a change in ownership rather than the March 1 lien date.

As to the matter of an inventory of property in the possession of the personal representative or as to which the personal representative has "knowledge", see Note to Section 8850 (contents of inventory).

§ 8801. Supplemental inventory and appraisal

8801. If property not included in the inventory comes to the possession or knowledge of the personal representative, the personal representative shall file an inventory and appraisal of the property in the manner prescribed for the original inventory and appraisal. The inventory and appraisal shall be filed within two months after the property comes to the possession or knowledge of the personal representative.

Comment. Section 8801 restates former Probate Code Section 611 without substantive change. For enforcement of this requirement, see Section 8803 (failure to timely file inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. The same problems are noted in connection with this section as are noted concerning Section 8800. The State Bar observes that the two-month time limit is "unrealistic. A much longer time or a reasonable time is more appropriate." The Los Angeles County Bar believes that the time limit in this section should be conformed to whatever time limit applies in Section 8800.

Existing law provides that the duty imposed by this section may be enforced, after notice, by attachment or removal from office. The State Bar questions whether "attachment" is necessary. In this draft we have placed enforcement provisions in Section 8805, which does not provide for attachment. The Los Angeles County Bar questions not only attachment but also removal from office as an appropriate sanction. They ask what the need is for special sanctions here, when there are general sanctions available for a personal representative who fails to discharge the duties of the office. Also, "Is the court limited to these two sanctions and prevented from imposing others?" The staff tends to agree that special sanctions are not necessary here. See Note under Section 8805.

§ 8802. Form of inventory and appraisal

8802. The inventory and appraisal shall be in the form of a separate listing of each item with the value of the item in dollars and cents figures opposite the item.

Comment. Section 8802 restates the fifth sentence of former Probate Code Section 600 without substantive change. The value must be the fair market value at the time of the decedent's death. Section 8800 (inventory and appraisal required).

§ 8803. Notice of filing of inventory and appraisal

8803. Upon the filing of the inventory and appraisal, the personal representative shall mail a copy to each beneficiary and to each person who has requested special notice pursuant to Section [1200.5].

Comment. Section 8803 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Person § 56

Personal representative § 58

Note. General notice provisions are not yet drafted.

§ 8804. Objection to inventory and appraisal

8804. (a) At any time before entry of the order for final distribution of the estate, any interested person may file with the court a written objection to the inventory and appraisal.

[(b) The clerk shall fix a time, not less than 10 days after the filing, for a hearing on the objection.]

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, to the persons and in the manner provided in Section [1200.5]. If the appraisal was made by the probate referee, the person objecting shall also mail a copy of the objection and of the notice to the probate referee at least 10 days before the time set for the hearing.

(d) The person objecting to the inventory and appraisal has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders it deems appropriate.

Comment. Section 8904 continues former Probate Code Section 608.5, and makes clear the procedure applies to the inventory as well as the appraisal. It is drawn from former Sections 14510-14513 of the Revenue and Taxation Code. See also Sections 8906 (appraisal report, backup data, and justification of appraisal) and [927] (exceptions to account, including objection to appraisal).

CROSS-REFERENCES

Clerk to set matter for hearing § 7202

Definitions

Clerk § 27

Court § 29

Interested person § 48

Order § 53

Person § 56

Note. General provisions on time of hearing and notices are not yet drafted.

This provision was enacted on Commission recommendation in 1984. The State Bar notes that it gives an unlimited time before final distribution to object to valuation of assets in an inventory. "A more limited time to object may be appropriate." The Bar does not state reasons for this suggestion.

§ 8805. Failure to timely file inventory and appraisal

8805. If the personal representative fails to file the inventory and appraisal within the time required in this chapter:

(a) The court, upon notice, may remove the personal representative from office.

(b) The personal representative is liable for any injury to the estate or to any interested person arising from the failure. Any damages awarded pursuant to this subdivision are a liability on the bond of the personal representative.

Comment. Section 8805 restates former Section 610 and a portion of former Section Probate Code 611, making clear that failure to timely file the appraisal is included within the statute. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

Note. Existing law requires filing of the inventory within the prescribed time, but the cases construe this to apply to the appraisal as well. Where the personal representative is unable to file the appraisal because of delay by the probate referee, the personal representative should be excused. Existing law imposes liability if the personal representative "neglects or refuses" to timely file the inventory; arguably, this would not impose liability where the personal representative is merely "unable".

One might also ask why compliance with the inventory and appraisal time limit is so critical. Perhaps it is left over from inheritance tax days. There are general requirements on prompt completion of administration, which would seem to be adequate. In any case, if the time limits in Sections 8800 and 8801 are removed, this section can be eliminated.

With respect to delay by the probate referee that in turn causes delay by the personal representative, the Commission has decided upon discipline in the form of reduction of fees or removal for a probate referee who fails to return the appraisal within 90 days.

CHAPTER 2. INVENTORY

Article 1. General Provisions

§ 8850. Contents of inventory

8850. (a) The inventory shall include all property in the decedent's estate.

(b) The inventory shall particularly specify all of the following property:

(1) Debts, bonds, mortgages, deeds of trust, notes, and other security for the payment of money to the decedent, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates.

(2) A statement of the interest of the decedent in any partnership of which the decedent was a member, appraised as a single item.

(3) An account of all money of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

Comment. Subdivisions (a) and (b) of Section 8850 restate the third and fourth sentences of former Probate Code Section 600 without substantive change. Subdivision (c) restates former Probate Code Section 601, with the addition of the reference to quasi-community property.

CROSS-REFERENCES

Definitions

Community property § 28
Personal representative § 58
Property § 62
Quasi-community property § 66

Note. This section requires the inventory to include "all the estate" of the decedent. This is consistent with Section 8800 (inventory and appraisal required), which requires an inventory of the estate of the decedent that has come into the possession or knowledge of the personal representative, and with Section 8853 (oath of personal representative), but it is inconsistent with Probate Code Section 920 which requires an accounting only as to items in the possession of the personal representative. This inconsistency may create a problem, since generally if a person inventories an item the person is accountable for the item.

The State Bar is concerned that this may be a trap and perhaps there should be a separate discussion of assets that the personal representative has knowledge but not possession of, so that those items can be clearly differentiated and not be part of the list of assets for which an accounting must be made.

The Los Angeles County Bar, like the statutes, is inconsistent in its position on this point. In one place they take the position that possession is irrelevant and that the personal representative should inventory all assets that belonged to the decedent and that are subject to probate in California. In another place they suggest that the inventory refer only to assets in the possession of the personal representative. The personal representative has a duty to pursue assets of which he or she has knowledge and can include them on a supplemental inventory when he or she takes possession of them.

In this connection, it should be noted that the statutes do not define the "estate" of the decedent for purposes of administration. Presumably the personal representative is not required to inventory

joint tenancy property, property in a revocable trust, and other "nonprobate" assets of the decedent, but this is nowhere made clear or defined precisely in the law.

§ 8851. Debts and demands against personal representative

8851. Appointment of a person as personal representative does not discharge the person from any debt or demand of the decedent against the person, but the debt or demand shall be included in the inventory. The person is liable for the debt or demand when it becomes due.

Comment. Section 8851 restates former Probate Code Section 602 and extends the provisions from executors to all personal representatives.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Note. This section has been extended from executors to all personal representatives at the suggestion of the State Bar and Los Angeles County Bar.

§ 8852. Discharge or devise of debts and demands

8852. The discharge or devise in a will of any debt or demand of the testator against the executor or any other person is not valid against creditors of the testator, but is a specific devise of the debt or demand. The debt or demand shall be included in the inventory. If necessary the debt or demand shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the debt or demand shall be distributed in the same manner and proportion as other specific devises.

Comment. Section 8852 continues former Section 603 without substantive change.

CROSS-REFERENCES

Definitions

Devise § 32

Will § 88

§ 8853. Oath of personal representative

8853. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of all property in the decedent's estate that has come into the possession or knowledge of the personal representative, and particularly of all money of the decedent and all debts and demands of the decedent against the personal representative.

(b) The oath shall be endorsed upon or annexed to the inventory.

Comment. Section 8853 restates former Probate Code Section 604 without substantive change. The requirement of subscription of an oath may be satisfied by an written affirmation. Code Civ. Proc § 2015.6.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. This section again makes reference to property within the knowledge as well as possession of the personal representative. See Sections 8800 and 8850, and the Note to Section 8850 (contents of inventory).

Article 2. Discovery of Property of Decedent

Note. The staff draft of this article takes the substance of existing Probate Code Sections 612 to 615 and substantially modernizes and simplifies the language. The staff has a serious doubt, however, whether these provisions are needed. The general discovery mechanisms available in all other civil actions seem to work and should be useful here. Why should we "reinvent the wheel" for probate proceedings?

This feeling is substantially supported by written comments we have received concerning these sections. Commissioner Stodden writes that the provision for examination should be limited in some fashion. "It gives the parties a free deposition at taxpayers expense and once the deposition has been taken the court has no power to do anything other than dismiss the citee. In Los Angeles we recently had one 613 examination continue for 12 days."

The Los Angeles County Bar notes that, "A reading of legislative history indicates that §§ 851.5 et seq. were enacted because earlier courts felt that §§ 612 and 613 were not broad enough under the concept of "limited jurisdiction" of the Superior Court sitting in Probate, however, the true relationship between them is not clear. Frequently, a person files a petition under § 612 alleging that another is concealing property of an estate, and in the alternative, alleges under § 851.5 that there is a dispute over title to the property. The title dispute is not the same as a fraudulent concealment, and yet both sections are being used to refer to the same action."

§ 8870. Subpoena to appear and be examined concerning decedent's property

8870. (a) Upon petition by the personal representative or other interested person, the court may issue a subpoena to any person to appear before the court and be examined under oath concerning any of the following:

(1) Property of the decedent the person is alleged to have embezzled, concealed, smuggled, or fraudulently disposed of.

(2) Any deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property, any claim or demand of the decedent, or any lost will of the decedent the person is alleged to have possession or knowledge of.

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a subpoena under this section.

(c) Disobedience of a subpoena issued pursuant to this section may be punished as a contempt of the court issuing the subpoena.

Comment. Subdivisions (a) and (b) of Section 8870 restate the first two sentences of former Probate Code Section 613, substituting a petition for a complaint and a subpoena for a citation. See also Section 7061 (actions in chambers).

Subdivision (c) restates the first sentence of former Probate Code Section 614. For general provisions governing issuance and enforcement of subpoenas, see Code Civ. Proc. § 1985 et seq. See also Section 7200 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

Property § 62

Will § 88

Verification required § 7203

§ 8871. Examination

8871. (a) At the examination, interrogatories may be put to the person subpoenaed pursuant to Section 8870, and witnesses may be produced and examined on either side. All such interrogatories and answers must be in writing, signed by the person examined, and filed in the court.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts to the personal representative.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses shall be allowed out of the estate.

Comment. Subdivisions (a) and (b) of Section 8871 restate the second, third, and fourth sentences of former Probate Code Section 614. Subdivision (c) supersedes the third sentence of former Probate Code Section 613. The court order of disclosure is enforceable in the same manner as other court orders. See, e.g. Code Civ. Proc. § 209 (contempt); see also Section 7200 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

§ 8872. Subpoena to appear and account

8872. (a) Upon petition by the personal representative, the court may issue a subpoena to any person who has possession or control of property in the decedent's estate to appear before the court and make an account under oath of the property and the person's proceedings with respect to the property.

(b) Disobedience of a subpoena issued pursuant to this section may be punished as a contempt of the court issuing the subpoena.

Comment. Section 8872 restates former Probate Code Section 615, substituting a petition for a complaint and a subpoena for a citation. See also Section 7061 (actions in chambers). The duty to account under this section includes both property entrusted to a person and property that comes into the person's possession, including money, accounts, and other property and papers. For general provisions governing issuance and enforcement of subpoenas, see Code Civ. Proc. § 1985 et seq. See also Section 7200 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

§ 8873. Embezzlement, concealment, smuggling, or fraudulent disposition of property in estate

8873. A person who embezzles, conceals, smuggles, or fraudulently disposes of property in the estate is chargeable therewith and is liable for twice the value of the property, recoverable in an action by the personal representative for the benefit of the estate.

Comment. Section 8873 restates former Probate Code Section 612 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 3. APPRAISAL

Article 1. Procedure

§ 8900. Appraisal by personal representative, probate referee, and independent expert

8900. The appraisal shall be made by the personal representative, probate referee, or independent expert as provided in this chapter.

Comment. Section 8900 restates the introductory clause of former Probate Code Section 605(a) with the addition of the reference to an independent expert. See Section 8904 (appraisal by independent expert). Appointment of a probate referee is made pursuant to Article 2 (commencing with Section 8920). The appraisal is made of the fair market value of the property at the time of the decedent's death. See Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8901. Appraisal by personal representative

8901. (a) The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the ostensible value or specified amount:

(1) Money, currency, and cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued before the decedent's death that can be immediately converted to cash.

(2) Refund checks issued after the decedent's death, including tax and utility refunds.

(3) Accounts in financial institutions.

(4) Money market and brokerage accounts.

(5) Proceeds of life and accident insurance policies and retirement plans payable on death in lump sum amounts.

(b) The personal representative or the personal representative's attorney is not entitled to receive compensation for extraordinary services by reason of appraising any asset pursuant to this section.

Comment. Subdivisions (1), (3), and (5) of Section 8901(a) restate former Probate Code Section 605(a)(1) without substantive change. The definition of "cash item" in subdivision (a)(1) is consistent with existing practice. Calif. Prob. Referees' Assn., Probate Referees' Procedures Guide, p. 9 (1976). Paragraphs (2) and (4) of subdivision (a) are new. The personal representative may appraise the items listed in paragraphs (2) and (4), as well as the items listed in paragraphs (1), (3), and (5), only if their fair market value can be determined solely from their face without calculation or reference to other sources. See introductory clause of subdivision (a).

Subdivision (b) restates former Probate Code Section 600(c) without substantive change.

CROSS-REFERENCES

Definitions

Account § 21

Financial institution § 40

Personal representative § 58

Property § 62

Note. Subdivision (b) precludes extraordinary fees for self-appraisal of cash-type assets. Should extraordinary fees be authorized where the probate referee is waived and the personal representative appraises the whole estate?

§ 8902. Appraisal by probate referee

8902. The probate referee shall appraise all property other than that appraised by the personal representative.

Comment. Section 8902 restates a portion of former Probate Code Section 605(a)(2). The probate referee may serve an appraisal function in areas outside of decedent estate administration. See Comment to Section 8800 (inventory and appraisal required). There are statutory exceptions to appraisal by the probate referee. See, e.g., Section 2610 (inventory and appraisal of conservatorship under Lanterman-Petris-Short Act).

Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920). The personal representative must furnish the referee such information as the referee requires concerning

the assets appraised by the personal representative or to be appraised by the probate referee. See Sections 450-453 (powers of probate referee).

For waiver of the probate referee, see Section 8903. For appraisal by an independent expert, see Section 8904.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8903. Waiver of appraisal by probate referee

8903. (a) The court may, for good cause, waive appraisal by a probate referee.

(b) The personal representative may petition a waiver either in the petition for appointment of the personal representative or in a separate petition filed in the estate proceedings, but in no event shall the petition be made later than the time the inventory and appraisal is filed pursuant to Section 8800. The petition shall include an appraisal of all property in the estate and a statement that sets forth the good cause that justifies the waiver.

(c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. A copy of the petition and notice of the date of the hearing shall be served on, and in the same manner as on, all persons who are entitled to notice pursuant to Section [926].

(d) Notwithstanding Section 8901, if the petition is granted, the appraisal included in the petition shall be filed pursuant to Section 8800.

Comment. Section 8903 restates former Probate Code Section 605(a)(2)(C) and 605(b), with changes to make clear that the application for waiver is made by petition, to enable the petition to be made at any time before the inventory and appraisal is filed, and to make clear that the appraisal included in the petition is to be filed pursuant to Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Clerk to set matter for hearing § 7202

Definitions

Court § 29

Person § 56

Personal representative § 58

Property § 62

Verification required § 7203

Note. Standardized notice provisions for use throughout the Code have not yet been drafted.

The waiver procedure in Section 8903 has been revised to allow the petition to be made at or before the time the inventory and appraisal is filed, at the suggestion of the Los Angeles County and State Bars. The State Bar notes that "The actual practice is to file a petition at

the commencement of the estate." The Los Angeles County Bar states that the personal representative "should be able to file such a petition at any appropriate stage in the proceedings, not only at the time the inventory is filed. Often, such a petition may be filed in conjunction with another petition and thus avoid the need for a separate hearing."

Assembly Bill 2896, currently pending in the Legislature, would make changes in the waiver procedure. Among other matters, it requires that a probate referee be designated in every case. Thereafter, notice of a waiver petition must be served on the designated probate referee. If appraisal by the probate referee is waived by the court, the referee is not entitled to a minimum fee, expenses, or commission.

§ 8904. Appraisal by independent expert

8904. (a) Notwithstanding Section 8902, a unique, unusual, or special item may, at the election of the personal representative, be appraised by an independent expert qualified to appraise that item.

(b) Unless appraisal by a probate referee is waived, an appraisal of property pursuant to this section is subject to review by the probate referee. The personal representative and the probate referee may agree to a reduction or waiver of the commission of the probate referee as to the property. If the personal representative and the probate referee are unable to agree, the court shall determine what commission, if any, is appropriate.

Comment. Section 8904 is new.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

§ 8905. Verification of appraisal

8905. A person who appraises property, whether a personal representative, probate referee, or independent expert, shall sign the appraisal as to property appraised by that person, and shall take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability.

Comment. Section 8905 restates former Probate Code Section 608, with the inclusion of an independent appraisal expert. See Section 8904. The requirement of subscription of an oath may be satisfied by an written affirmation. Code Civ. Proc § 2015.6.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8906. Appraisal report, backup data, and justification of appraisal

8906. The probate referee shall, upon demand by the personal representative or any interested person:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise any item of property in the estate. The probate referee shall provide the appraisal report or backup data without charge. The cost of providing the appraisal report or backup data shall not be allowed as an expense of appraisal but is included in the commission for services of the probate referee.

(b) Justify the appraisal of any item of property in the estate appraised by the probate referee, if the appraisal is contested, whether by objection pursuant to Section 8804, by tax audit, or otherwise. The probate referee is entitled to an additional fee for services provided pursuant to this subdivision, to be agreed upon by the personal representative and referee. If the personal representative and the probate referee are unable to agree, the court shall determine what fee is appropriate.

Comment. Section 8906 is new. Backup data required pursuant to subdivision (a) might include, for example, a listing of comparable sales used in the appraisal.

Article 2. Designation and Removal of Probate Referee

§ 8920. Designation by court

8920. (a) The court shall designate the probate referee from among the persons appointed by the State Controller to act as a probate referee for the county. If there is no person available who is able to act, the court may designate a probate referee from another county.

(b) If property in the estate is situated in a county other than the county in which the estate is being administered, the court (or, on request of the court, the court of the other county) may designate a probate referee from the other county to appraise the property situated in the other county.

Comment. Subdivision (a) of Section 8920 continues a portion of former Probate Code Section 605((a)(2), and makes clear that the probate referee is designated from the panel appointed for the county by the State Controller. See Section 400 (appointment by Controller). Where there is no person able to act, whether because all are disqualified or removed or because there are an insufficient number appointed or otherwise, the court may appoint a probate referee from another county. This codifies existing practice. The designation of a probate referee may be made by the judge in chambers. Section 7061.

Subdivision (b) restates former Probate Code Section 607 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

§ 8921. Designation at request of personal representative

8921. The court may designate a person requested by the personal representative as probate referee, upon a showing by the personal representative of good cause for the designation. As used in this section, "good cause" includes:

(a) The probate referee has recently appraised the same property that will be appraised in the administration proceeding.

(b) The probate referee will be making related appraisals in another proceeding.

(c) The probate referee has recently appraised similar property in another proceeding.

Comment. Section 8921 is new.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

§ 8922. Discretion not to designate person as probate referee

8922. The court has authority and discretion not to designate a person as probate referee even though appointed by the State Controller to act as a probate referee for the county.

Comment. Section 8922 is new. The court may, but is not required to, designate probate referees in rotation from the panel for the county, or may use any other system of designation. The court may refuse to designate a particular person as probate referee if experience with that person is unsatisfactory, or for other proper reasons in the court's discretion. Where there is no satisfactory

probate referee for the county, or not a sufficient number of satisfactory probate referees for the county, the court may designate a probate referee from the panel appointed for another county. Section 8920 (designation by court).

CROSS-REFERENCES

Definitions

Court § 29

§ 8923. Disqualification of probate referee

8923. The court shall not designate as probate referee any of the following persons:

(a) The clerk or a deputy clerk.

(b) A partner or employee of the judge.

(c) A person who is related to the judge or the spouse of the judge within the third degree, or who is married to a relative of the judge within the third degree.

Comment. Section 8923 restates former Probate Code Section 606 without substantive change.

CROSS-REFERENCES

Definitions

Clerk § 27

Court § 29

§ 8924. Removal of probate referee

8924. (a) The court shall remove the designated probate referee upon petition of the personal representative in any of the following circumstances:

(1) The personal representative shows cause, including incompetence or undue delay in making the appraisal, that in the opinion of the court warrants removal of the probate referee.

(2) The personal representative demands removal of the probate referee, regardless of cause. Removal pursuant to this paragraph is a matter of right, but may be exercised only once in the administration of the estate and only before the personal representative delivers an inventory to the probate referee.

(b) Upon removal of the probate referee the court shall designate another person to act as probate referee in the manner prescribed in Section 8920.

Comment. Section 8924 is new.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Verification required § 7203

Note. *General petition, notice, and hearing procedures applicable to this and other motions under the Code are to be drafted.*

Article 3. Time For Probate Referee Appraisal

Comment. Sections 8940 to 8943 are new. They parallel Sections 12200 to 12205 (time for closing estate).

§ 8940. Time required for appraisal or status report

8940. The probate referee shall, not later 90 days after the personal representative delivers the inventory to the referee, either return the appraisal to the personal representative or make a report of status of appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8941. Report of status of appraisal

8941. (a) If a report of status of appraisal is made pursuant to Section 8940, the report shall show the reasons why the property has not been appraised and an estimate of the time needed to appraise the property.

(b) The report shall be delivered to the personal representative and filed with the court.

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

(1) That the appraisal of the property be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another person to act as probate referee in the manner prescribed in Section 8920.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

Verification required § 7203

§ 8942. Failure to make appraisal or report

8942. (a) If the probate referee does not return the appraisal or make the report within the time required by this article or prescribed by the court, the court may, upon petition of the personal representative, cite the probate referee to appear before the court and show the reasons why the property has not been appraised.

(b) Upon the hearing of the citation, the court may order either of the following:

(1) That the appraisal of the property be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another person to act as probate referee in the manner prescribed in Section 8920.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

§ 8943. Sanction for failure to timely appraise property

8943. If the time taken for appraisal of the property exceeds the time required by this article or prescribed by the court, the court may, upon the hearing for an allowance upon the commission of the probate referee, reduce the commission by an amount the court deems appropriate, regardless of whether the commission otherwise allowable under the provisions of Sections 8960 to 8963 would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the probate

referee 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 previous action taken under this article as a result of the delay.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Personal representative § 58

Property § 62

Article 4. Commission and Expenses of Probate Referee

§ 8960. Payment of commission and expenses

8960. The commission and expenses provided by this article as compensation for the services of the probate referee shall be paid from the estate appraised by the referee. In no event shall a probate referee receive any compensation from the state for any services performed.

Comment. Section 8960 restates a portion of the first sentence and the third sentence of the first paragraph of former Probate Code Section 609 without substantive change.

§ 8961. Amount of commission and expenses

8961. As compensation for services the probate referee shall receive all of the following:

(a) A commission of one-tenth of one percent of the total value of the property for each estate appraised, subject to Section 8962. The commission shall be computed excluding property appraised by the personal representative pursuant to Section 8901 and shall be reduced for property appraised by an independent expert to the extent required pursuant to Section 8904.

(b) Actual and necessary expenses allowed by the court for each estate appraised. The referee must file, with the inventory, a verified account of the referee's disbursements.

Comment. Section 8961 restates a portion of the first sentence and the second sentence of the first paragraph, and the second paragraph, of former Probate Code Section 609 without substantive change. The commission provided by this section is subject to a maximum and minimum pursuant to Section 8942 (maximum and minimum commissions).

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

Note. AB 2896 (Harris), currently pending, would add a small estate exception to the probate referee's commission:

No minimum fee, expenses, or commission for the probate referee's services shall be charged if, apart from the items appraised by the executor or administrator under [Section 8901], the estate consists solely of household furniture, furnishings, and personal effects of the decedent having a fair market value of one thousand dollars (\$1,000) or less.

§ 8962. Maximum and minimum commissions

8962. (a) Notwithstanding Section 8961 and subject to subdivision (b), the commission of the probate referee shall in no event be less than seventy-five dollars (\$75) nor more than ten thousand dollars (\$10,000) for any estate appraised.

(b) Upon application of the probate referee and notice given pursuant to [Section 1200.5], the court may allow a commission in excess of ten thousand dollars (\$10,000) if the court determines that the reasonable value of the referee's services exceeds that amount.

Comment. Section 8962 restates a portion of the first sentence of the first paragraph and the third paragraph of former Probate Code Section 609 with the addition of the provision for notice in the case of an increase in commission.

CROSS-REFERENCES

Definitions

Court § 29

Note. General notice provisions are not yet drafted.

The provision for notice where the probate referee seeks a commission greater than the statutory maximum is included at the suggestion of the Los Angeles County and State Bar Associations.

§ 8963. Division of commission between referees

8963. If more than one probate referee appraises property in the estate pursuant to subdivision (b) of Section 8920, each is entitled to the share of the commission that the court allows. In no case shall the total commission for all referees exceed the maximum commission that would be allowable for a single referee.

Comment. Section 8963 restates former Probate Code Section 609.5 without substantive change. Reference to division of expenses is omitted, since each referee is entitled to actual and necessary expenses allowed by the court, regardless of the amount of the commission. It should be noted that the amount of the commission split by the referees may exceed the statutory maximum in a case where the court determines that the reasonable value of the services in the case exceeds the statutory amount. See Section 8962(b).

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

Note. *The fee splitting provision only applies by its terms where there are referees acting in two different counties. Wouldn't it make sense to apply this provision any time there are two different referees designated (e.g., one becomes incapacitated and another completes the job) in the same county?*

COMMENTS TO REPEALED SECTIONS

CHAPTER 9. INVENTORY AND APPRAISEMENT

Probate Code § 600 (repealed)

Comment. The first portion of the first sentence of former Section 600 is restated in Estate and Trust Code Section 8800 (inventory and appraisal required) without substantive change. See also Estate and Trust Code Section 7061 (actions in chambers). The last portion of the first sentence is continued in Section (change in ownership statement) *[to be drafted]*.

The second sentence is not continued because it no longer serves a useful purpose. The third and fourth sentences are restated in Section 8850 (contents of inventory) without substantive change. The fifth sentence is restated in Estate and Trust Code Section 8802 (form of inventory and appraisal) without substantive change. See also Estate and Trust Code Section 8800 (inventory and appraisal required).

Probate Code § 601 (repealed)

Comment. Former Section 601 is restated in Estate and Trust Code Section 8850 (contents of inventory) without substantive change.

Probate Code § 602 (repealed)

Comment. Former Section 602 is restated in Estate and Trust Code Section 8851 (debts and demands against personal representative) and extended to all personal representatives.

Probate Code § 603 (repealed)

Comment. Former Section 603 is continued in Estate and Trust Code Section 8852 (discharge or devise of debts and demands) without substantive change.

Probate Code § 604 (repealed)

Comment. Former Section 604 is restated in Estate and Trust Code Section 8853 (oath of personal representative) without substantive change.

Probate Code § 605 (repealed)

Comment. The introductory portion of subdivision (a) of former Section 605 is superseded by Section 8900 (appraisal by personal representative, probate referee, and independent expert). Subdivision (a)(1) is superseded by Estate and Trust Code Section 8901 (appraisal by personal representative). See also Estate and Trust Code Sections 40 ("financial institution" defined) and 8800 (inventory and appraisal required).

The introductory portion of subdivision (a)(2) is restated in Estate and Trust Code Section 8902 (appraisal by probate referee). Paragraphs (A) and (B) of subdivision (a)(2) are superseded by provisions of Division 8 (commencing with Section 13000) (disposition of estates without administration). Paragraph (C) of subdivision (a)(2) is continued in Estate and Trust Code Section 8903 (waiver of appraisal by probate referee) without substantive change.

Subdivision (a)(3) is restated in Estate and Trust Code Section 8903(b)-(d) (waiver of appraisal by probate referee), with clarifying changes.

Subdivision (b) is superseded by Estate and Trust Code Sections 450-453 (powers of probate referee). Subdivision (c) is restated in Estate and Trust Code Section 8901 (appraisal by personal representative) without substantive change.

Probate Code § 606 (repealed)

Comment. Former Section 606 is restated in Estate and Trust Code Section 8923 (disqualification of probate referee) without substantive change.

Probate Code § 607 (repealed)

Comment. Former Section 607 is restated in Estate and Trust Code Section 8920 (designation by court) without substantive change.

Probate Code § 608 (repealed)

Comment. Former Section 608 is restated in Estate and Trust Code Section 8905 (verification of appraisal), with the addition of an independent appraisal expert.

Probate Code § 608.5 (repealed)

Comment. Former Section 608.5 is continued in Estate and Trust Code Section 8804 (objection to inventory and appraisal), with the clarification that the procedure applies to the inventory as well as the appraisal.

Probate Code § 609 (repealed)

Comment. The first portion of the first sentence of the first paragraph of former Section 609 is restated in Estate and Trust Code Sections 8960 (payment of commission and expenses) and 8961 (amount of commission and expenses) without substantive change. The last portion of the first sentence is restated in Estate and Trust Code Section 8962 (maximum and minimum commissions) without substantive change. The second sentence is restated in Estate and Trust Code Section 8961 (amount of commission and expenses) without substantive change. The third sentence is restated in Estate and Trust Code Section 8960 (payment of commission and expenses) without substantive change.

The second paragraph is restated in Estate and Trust Code Section 8961 (amount of commission and expenses) without substantive change. The third paragraph is restated in Estate and Trust Code Section 8962 (maximum and minimum commissions), with the addition of a provision for notice.

Probate Code § 609.5 (repealed)

Comment. Former Section 609.5 is restated in Estate and Trust Code Section 8963 (division of commission between referees) without substantive change.

Probate Code § 610 (repealed)

Comment. Former Section 610 is restated in Estate and Trust Code Section 8805 (failure to timely file inventory and appraisal), which makes clear that failure to time file the appraisal is included within the statute. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

Probate Code § 611 (repealed)

Comment. Former Section 611 is restated in Estate and Trust Code Sections 8801 (supplemental inventory and appraisal) and 8805 (failure to timely file inventory and appraisal) without substantive change.

Probate Code § 612 (repealed)

Comment. Former Section 612 is restated in Estate and Trust Code Section 8873 (embezzlement, concealment, smuggling, or fraudulent disposition of property in estate) without substantive change.

Probate Code § 613 (repealed)

Comment. The first two sentences of former Section 613 are restated in Estate and Trust Code Section 8870 (subpoena to appear and be examined concerning decedent's property), substituting a petition for a complaint and a subpoena for a citation. The third sentence is superseded by Estate and Trust Code Section 8871 (examination).

Probate Code § 614 (repealed)

Comment. The first sentence of former Section 614 is not continued; the court order is enforceable in the same manner as other orders. The second, third, and fourth sentences are restated in Section 8871 (examination).

Probate Code § 615 (repealed)

Comment. Former Section 615 is restated in Estate and Trust Code Section 8872 (subpoena to appear and account), substituting a petition for a complaint and a subpoena for a citation.

Comments to Repealed Sections

CHAPTER 23. PROBATE REFEREES

Probate Code § 1300 (repealed)

Comment. Former Section 1300 is not continued; it no longer serves a useful purpose.

Probate Code § 1301 (repealed)

Comment. Subdivision (a) of former Section 1301 is restated in Estate and Trust Code Section 451 (compelling appearance), with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates. Subdivision (b) is continued in Estate and Trust Code Section 450 (general powers) without substantive change.

Probate Code § 1302 (repealed)

Comment. Former Section 1302 is restated in Estate and Trust Code Section 451 (compelling appearance) without substantive change.

Probate Code § 1303 (repealed)

Comment. Former Section 1303 is continued in Estate and Trust Code Section 452 (examination, testimony, and production of documents), with the addition of the reference to production of documents.

Probate Code § 1304 (repealed)

Comment. Former Section 1304 is restated in Estate and Trust Code Section 453 (contempt) without substantive change.

Probate Code § 1305 (repealed)

Comment. The first sentence of the first paragraph of former Section 1305 is continued in Estate and Trust Code Section 400(a) (appointment by Controller) and the first sentence of Estate and Trust Code Section 401(a) (qualifications for appointment) without substantive change. The second sentence is continued in Estate and Trust Code Section 401(b) (qualifications for appointment) without change. The third sentence is continued in Estate and Trust Code Section 400(b) (appointment by Controller) without substantive change.

The first sentence of the second paragraph is not continued; it is a transitional provision that no longer serves a function. The second sentence is continued in the first sentence of Estate and Trust Code Section 403(a) (term of office of probate referee) without substantive change. The third sentence is continued in Section 403(b) (term of office of probate referee) without substantive change. The fourth sentence is not continued; it is a transitional provision that no

longer serves a function. The fifth sentence is continued in the second sentence of Estate and Trust Code Section 401(a) (qualifications for appointment) without substantive change. The sixth sentence is continued in the second sentence of Estate and Trust Code Section 403(a) (term of office of probate referee) without substantive change.

Probate Code § 1306 (repealed)

Comment. Former Probate Code Section 1306 is continued in Estate and Trust Code Section 402 (qualification examination) without substantive change.

Probate Code § 1307 (repealed)

Comment. Former Probate Code Section 1307 is continued in Estate and Trust Code Section 404(a) (standards for probate referee) without substantive change.

Probate Code § 1308 (repealed)

Comment. Subdivision (a) of former Probate Code Section 1308 is continued in Estate and Trust Code Section 404(b) (standards for probate referee) without substantive change. The first sentence of subdivision (b) is continued in Estate and Trust Code Section 405 (revocation of appointment of probate referee) without substantive change. The second sentence of subdivision (b) is not continued; it is a transitional provision that no longer serves a function.

Probate Code § 1309 (repealed)

Comment. Former Probate Code Section 1309 is continued in Estate and Trust Code Section 406 (termination of authority) without substantive change.

Probate Code § 1310 (repealed)

Comment. Former Probate Code Section 1310 is not continued; it relates to illegal activities in connection with the inheritance tax, which has been abolished.

Probate Code § 1311 (repealed)

Comment. Former Probate Code Section 1311 is restated in Estate and Trust Code Section 407(a)-(b) (political activities of probate referee) without substantive change.

Probate Code § 1312 (repealed)

Comment. Former Probate Code Section 1312 (with the exception of the last sentence) is restated in Estate and Trust Code 407(c) (political activities of probate referee). The last sentence is not continued; it is a transitional provision that no longer serves a function.

Probate Code § 1313 (repealed)

Comment. Former Section 1313 is not continued. For the report of the California Law Revision Commission concerning administration of estates of decedents, see Recommendation Proposing the Estate and Trust Code, .. Cal.L.Revision Comm'n Reports ... (198.).