

Memorandum 86-75

Subject: Study L-1040 - Estate and Trust Code (Inventory and Appraisal
--draft of tentative recommendation)

Attached to this memorandum is a draft of the tentative recommendation relating to inventory and appraisal (including probate referees). The draft incorporates all Commission decisions made in this area to date. The preliminary portion that explains the recommendations the Commission is making is new, and should be reviewed with care. This is a very sensitive political topic that requires some discretion.

The only other issue the staff wishes to raise at this time in connection with the draft is the requirement of Revenue and Taxation Code Section 480 that the personal representative must, at the time the inventory and appraisal is filed with the court, also 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. The staff has no insight into this problem; we hope the bar associations will elaborate on their positions at the meeting.

If the tentative recommendation draft is satisfactory, we will distribute it for comment after the meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

07/24/86

Staff Draft

TENTATIVE RECOMMENDATION
Relating to
INVENTORY AND APPRAISAL

BACKGROUND

The major changes made by the new code affecting the inventory and appraisal relate to the role of the probate referee.

The 1982 legislation enacting the Probate Code provisions governing probate referees¹ made specific reference to the study conducted by the California Law Revision Commission regarding the administration of estates of decedents, to be monitored by the appropriate legislative policy committees.² The Commission has devoted substantial resources to investigating the functioning of the probate referee system, including reviewing material from previous legislative hearings concerning probate referees, surveying inventory and appraisal systems used in other jurisdictions, and considering views expressed by the organized probate bar (including State Bar, Los Angeles County Bar, Beverly Hills Bar, and other bar associations), as well as communications from many interested persons and groups (including the California Probate Referees Association, the California Bankers Association, the California Appraisers Council, and the American Institute of Real Estate Appraisers). The Commission has also allocated substantial amounts of public meeting time to presentations by interested persons and groups.

1. Prob. Code §§ 1300-1313, enacted by 1982 Cal. Stats., ch. 1535, § 13.

2. Prob. Code § 1313.

In addition to these activities, the Commission distributed widely throughout the probate community a questionnaire designed to elicit opinions concerning the functioning of the probate referee system and the desirability of reforms. The Commission received well over 100 completed questionnaire responses, including group responses from a number of probate bar associations, as well as responses from judges and commissioners, public administrators, and practicing lawyers. Responses came from persons in 20 counties, rural as well as urban.

The Commission has taken into account this substantial volume of information in developing the following recommendations for changes in the role of the probate referee in administration of decedents' estates.

RETENTION OF PROBATE REFEREE

The Commission gave careful consideration to the concept of removing the probate referee from decedent estate administration entirely, in reliance on appraisal by the personal representative. It has been argued that this would save money for most estates by eliminating the probate referee's fees and would simplify estate administration by eliminating an unneeded third party from the process, with its attendant delays.

The Commission's investigation reveals that the cost to the estate of the probate referee appraisal is relatively small. The referee's fee is a statutory commission of one tenth of one percent of the value of the estate, plus actual expenses.³ This is substantially less than an independent appraisal by a private appraiser would cost the estate in a case where such an appraisal is needed for tax reasons or otherwise, and is one of the smaller costs associated with probate.

In cases where an appraisal would not be otherwise needed, however, the probate referee's fee is an unnecessary cost to the estate. The Commission recommends, below, a number of changes directed at this problem, relating to assets that may properly be appraised by the personal representative and procedures for waiver of a probate referee appraisal and reduction of fees.

3. Prob. Code § 609. The commission is subject to a statutory maximum of \$10,000 and minimum of \$75.

The Commission's investigation also reveals that the complexity and delay of the probate referee's involvement is minimal in the ordinary case. The probate referee's appraisal is fairly expeditious; the typical turnaround time for the appraisal after delivery of the inventory by the personal representative is 15 days. Usually, any delay caused is not due to the referee's appraisal but to time spent by the personal representative in preparation and delivery of the inventory.

There are some cases in which a particular probate referee is dilatory or not performing up to standards. The Commission recommends, below, procedures to force expeditious appraisals in such cases, including sanctions against and procedures for removal of inadequate probate referees.

The probate bar generally believes the probate referee works efficiently and expedites and facilitates the probate process in the usual case. Most judges and practitioners feel the referee provides a useful and ordinarily high quality service at modest cost to the estate, and that it is an institution that should be retained. Problems in the system should be resolved by attacking the problems directly, not by scrapping what is a basically sound system. The Commission, based on its study, concurs with these views, and recommends the following changes to cure problems in the current probate referee system.

ASSETS APPRAISED BY REFEREE

In some estates the assets to be appraised are relatively simple and do not seem to call for use of an appraisal expert such as a probate referee. These are estates in which the bulk of the assets are liquid and easily ascertainable, that could well be appraised by the personal representative without resort to services of the probate referee.

Existing law recognizes this situation by providing for the personal representative to appraise bank accounts, lump sum insurance payments, cash accounts, and a few other liquid assets.⁴ The new code

4. Prob. Code § 605.

expands these items to include money market accounts and refund checks issued after the decedent's death.

One area the Commission has examined closely is the appraisal of publicly traded stock listed on a national exchange. Although it appears that the personal representative rather than the probate referee might properly appraise such assets, the Commission does not recommend that this be done as a matter of course. The economy of scale that enables low-cost probate referee appraisals in the ordinary case would be substantially impaired by removing publicly traded stock as a matter of routine. In addition, a major reason the probate referee system works efficiently is that the referee simply takes and appraises all non-cash assets *en masse* and cheaply, without the time and expense of making fine distinctions between what particular items are and are not subject to referee appraisal. The savings achieved by attempting to distinguish among the many varieties of stock are not likely to be significant compared to the procedural costs involved, and could have the net result of being counterproductive in many cases. Finally, experience has shown that appraisals even of publicly traded and listed stock by inexperienced persons are frequently inaccurate, due to value fluctuations on the date of death, failure to take into account x-dividend dates, misidentification of the class of stock, and the like.

The Commission believes a better approach to appraisal of stock of all kinds, whether publicly traded or closely held, is to have as a standard that the referee be the appraiser, subject to waiver for good cause. This is existing law,⁵ and appears to work well in the ordinary case. In the unusual case, such as where the only major asset is stock in a difficult to value family corporation, it may be appropriate to waive the probate referee or to refer the matter to an independent expert for appraisal.⁶

5. Prob. Code § 605.

6. See discussion below under "Waiver and Related Matters."

WAIVER AND RELATED MATTERS

The existing procedure for waiver of the probate referee in appropriate cases the Commission has found to be basically sound. The one substantial revision in the waiver procedure made by the new code is to require that a waiver be made before the inventory is delivered to the probate referee and in any event not later than four months after commencement of probate. This will expedite administration by encouraging prompt action by the personal representative and will mitigate the problem of the probate referee having invested substantial work on an appraisal only to find the appraisal later waived.

The Commission is aware of Assembly Bill 2896 (Harris), pending in the 1986 Legislature as of the date of this tentative recommendation. The Commission has reviewed the changes in the waiver procedure that would be made by the bill, but does not recommend these changes in this tentative recommendation. If the bill is enacted, the Commission will review the changes again before making a final recommendation on this subject.

The new code supplements the waiver procedure by a provision to permit a unique, unusual, or special item of tangible personal property to be appraised by a qualified independent expert. This would enable the personal representative to avoid appraisal by the probate referee and to select the appraiser in a case where there is need for a special expert. The independent appraisal would be subject to review by the probate referee, and the referee's fees would be subject to reduction or waiver by negotiation with the personal representative or, if they are unable to agree, by the court.

SELECTION AND REMOVAL OF PROBATE REFEREE

Although the general level of satisfaction is high among people who work with probate referees, there are some instances of dissatisfaction. The Commission has concluded that existing remedies for incompetent or otherwise inadequate referees are not sufficient,⁷ and the new code supplements the existing remedies.

7. Existing remedies are generally under the State Controller. Prob. Code § 1308.

Initially, the new code enables the personal representative to avoid appointment of a probate referee known to provide poor service by application to the court to appoint some other referee. The new code makes clear that the court has authority and discretion not to designate a particular probate referee, and need not designate a referee merely because that referee happens to be next in line on a panel rotation.

The new code also enables the personal representative to select a particular probate referee, to a limited extent. This authority is limited in order to avoid favoritism or the ability to achieve a particular appraisal based on a known bias of the referee. However, selection of a particular probate referee may be appropriate in some situations where, for example, the same referee has recently appraised the same property or will be making related appraisals of the same property in another proceeding. Selection of a particular referee by the personal representative is subject to court discretion and a showing of good cause by the personal representative.

Where a referee has already been appointed, the new code provides two new removal procedures. First, the personal representative may remove the first referee appointed as a matter of right, without the need for a showing of cause. This is similar to a peremptory challenge of the first judge appointed, and should be an expeditious and effective remedy to ensure the competence of probate referees (by making incompetence easily avoided). Second, the personal representative may seek removal by the court for cause. Cause in this context includes incompetence and undue delay. This will supplement the general State Controller removal authority with local control over appointments in individual cases.

TIME FOR APPRAISAL

In the ordinary course of events the probate referee's appraisal is made expeditiously and is little cause for delay in probate. This is not always the case, however, and the new code adds provisions intended to ensure that all probate referee appraisals are completed quickly.

The new code creates a statutory duty on the probate referee to appraise the property promptly and with reasonable diligence. The code does not set a specific standard, since the time required for the appraisal may vary with the size, character, and difficulty of assets in the estate. The current norm is 15 days after delivery of the inventory and other information necessary for the appraisal.

If 90 days have elapsed since delivery of the inventory and the probate referee has not returned the appraisal, the probate referee is required to make a report of the status of appraisal showing why the property has not been appraised and estimating the time needed to complete the appraisal.⁸ The report is filed with the court and delivered to the personal representative, who may have the report set for hearing. Actions the court may take for a dilatory referee include reduction of fees and removal.

It is current practice for some probate referees to withhold delivery of the appraisal, even though completed, until their fees have been paid. This is inappropriate because it delays probate and, in an illiquid estate, it may make it impossible to proceed since payment must come from proceeds of sale of appraised property. The new code prohibits a probate referee from withholding an appraisal until payment, but also makes clear that the probate referee's fees are an expense of administration, included in the highest statutory priority for payment in the administration proceedings.⁹

8. This is analogous to the report made by the personal representative in the event of delay in closing the estate. See Prob. Code § 1025.5. The 90 day period was selected in recognition of the fact that in many cases it takes at least 60 days for the probate referee to obtain necessary appraisal information from the personal representative where the information has not been delivered with the inventory.

In this connection, the new code extends the time within which the personal representative must file the inventory and appraisal from three months to four. See Prob. Code § 600. The four month period is more realistic under current conditions, and is consistent with the 90 day limit for the probate referee. For uniformity, the time for filing a supplemental inventory and appraisal is also extended to four months. See Prob. Code § 611.

9. See Prob. Code § 950.

JUSTIFICATION OF APPRAISAL

If the probate referee's appraisal is questioned, there is no easy mechanism for obtaining the appraisal data used by the probate referee or for supporting the appraisal. The new code takes a number of steps to remedy this problem.

Upon demand by the personal representative or the beneficiary of property, the probate referee must provide any appraisal report or backup data concerning the property in the referee's files. This information must be provided without charge as part of the referee's regular services.

The referee may also be called upon to justify the appraisal at a hearing for a tax audit or otherwise. Because of the substantial time and effort that may be involved in this situation, the probate referee may be entitled to an additional fee, to be negotiated between the referee and person requiring the justification or, if they are unable to agree, to be fixed by the court.

These two remedies should be sufficient where a question concerning the appraisal arises within a short time after the appraisal is made. However, the law provides no clear record-keeping requirement, so that if an audit or other question arises some time later, the referee's files may be no longer available. The new code addresses this problem by requiring the referee to keep files for a period of three years after the appraisal is made. At the end of this period the information in the files must be offered to the beneficiaries of the property to which it relates. If unclaimed, the files may thereafter be destroyed.

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. Termination of authority
- § 406. 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. Protective orders and enforcement

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. Claims against personal representative
- § 8852. Discharge or devise of claims
- § 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. Wrongful taking, concealment, or 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
- § 8907. Retention of records by probate referee

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

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

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 to act as a probate referee shall be held at times and places within the state determined by the State Controller.

(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 person appointed to act as a probate referee is eligible for reappointment for a period of five years from the date of expiration of the term of office.

(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, with the clarification that a probate referee's eligibility lasts until five years after expiration of the referee's term of office.

§ 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.

§ 405. Termination of authority

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

(b) Upon cessation of authority of a person to act as a probate referee, the court shall reassign any estate for which the person had been designated as probate referee.

Comment. Subdivision (a) of Section 405 continues former Probate Code Section 1309 without substantive change. Subdivision (b) codifies existing practice. Other termination pursuant to law includes resignation.

§ 406. Political activities of probate referee

406. (a) A probate referee or any person who is an applicant for or seeking appointment or reappointment to act 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, incumbent, 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 may not appoint as a probate referee any person who violates subdivision (a)(1) or who, within the two-year period preceding the date of the appointment, violates subdivision

(a)(2), and any such appointment is void. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.

Comment. Subdivisions (a) and (b) of Section 406 restate former Probate Code Section 1311, with the addition of references to incumbency and reappointment. 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. In addition to nonappointment of a person seeking appointment, the Controller may revoke the appointment of a probate referee who violates this section after appointment. See, Section 404 (standards for referee).

CHAPTER 2. POWERS OF 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.

§ 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. Protective orders and enforcement

453. (a) Upon motion of a person required to appear before the probate referee to be examined, give testimony, or produce documents pursuant to this chapter, the court may make a protective order to protect the person from annoyance, embarrassment, or oppression.

(b) Upon motion of a probate referee, the court may make an order to show cause why a person who is required, but fails, to appear before the probate referee to be examined, give testimony, or produce documents pursuant to this chapter, should not be compelled to do so.

Comment. Subdivision (a) of Section 453 is drawn from Code of Civil Procedure Section 2037.8. Subdivision (b) is drawn from Code of Civil Procedure Section 2034.

CROSS-REFERENCES

Definitions

Person § 56

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

§ 8800. Inventory and appraisal required

8800. Within four months after letters are issued to a general personal representative, or within a further time allowed by the court for reasonable cause, the personal representative shall file with the clerk an inventory and appraisal of the fair market value at the time of the decedent's death of the property to be administered in the decedent's estate.

Comment. Section 8800 restates the first portion of the first sentence of former Probate Code Section 600, extending the time for filing the inventory and appraisal from three months to four. 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 part 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

Letters § 52

Personal representative § 58

§ 8801. Supplemental inventory and appraisal

8801. If, after the inventory is filed, the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in the inventory, the personal representative shall file a supplemental inventory and appraisal of the property in the manner prescribed for the original inventory and appraisal. The supplemental inventory and appraisal shall be filed within four months after the personal representative acquires knowledge of the property.

Comment. Section 8801 restates former Probate Code Section 611, extending the two month time for filing to four months. For enforcement of this requirement, see Section 8803 (failure to timely file inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 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 opposite the item. If the value of the item is other than a whole dollar amount, the fractional part of a dollar may be disregarded.

Comment. Section 8802 restates the fifth sentence of former Probate Code Section 600, with the addition of authority to omit dollar fractions instead of listing each item in dollars and cents figures. Cf. Rev. & Tax. Code § 18412(a)(1) (authority of Franchise Tax Board to provide that fractional part of dollar be disregarded). 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 person who has requested special notice pursuant to Section [1200.5].

Comment. Section 8803 is new.

CROSS-REFERENCES

Definitions

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 a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection 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 that appear appropriate. If the court determines the objection was filed without reasonable cause or good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the inventory and appraisal be made a charge against the person filing the objection.

Comment. Section 8804 continues former Probate Code Section 608.5, making clear the procedure applies to the inventory as well as the appraisal and providing for an award of fees and costs in the event of a frivolous objection. It is drawn from former Probate Code Section 927 and from former Revenue and Taxation Code Sections 14510-14513. 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

Interested person § 48

Person § 56

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

§ 8805. Failure to timely file inventory and appraisal

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

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

(b) The personal representative is liable for injury to the estate or to an interested person arising from the failure. 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, codifying the case law rule that failure to timely file the appraisal is included within the statute. Section 8805 is limited to negligent or intentional noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file the appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3. 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

Interested person § 48

Personal representative § 58

CHAPTER 2. INVENTORY

Article 1. General Provisions

§ 8850. Contents of inventory

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

(b) The inventory shall particularly specify 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 in 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

§ 8851. Claims against personal representative

8851. Appointment of a person as personal representative does not discharge the person from any claim of the decedent against the person, but the claim shall be included in the inventory. The person is liable for the claim 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

§ 8852. Discharge or devise of claims

8852. The discharge or devise in a will of any claim 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 claim. The claim shall be included in the inventory. If necessary the claim shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the claim shall be distributed in the same manner and proportion as other specific devises.

Comment. Section 8852 continues former Probate Code 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 to be administered in the decedent's estate that the personal representative has knowledge of, and particularly of money of the decedent and claims 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

Article 2. Discovery of Property of Decedent

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

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

(1) That the person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) That the person has knowledge or possession of any of the following:

(A) A 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.

(B) A claim of the decedent.

(C) A lost will of the decedent,

(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

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 shall be in writing, signed by the person examined, and filed with 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 charged against the petitioner or allowed out of the estate, in the discretion of the court.

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

Personal representative § 58

§ 8872. Subpoena to appear and account

8872. (a) On petition by the personal representative, the court may issue a subpoena to a 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 actions 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

Personal representative § 58

Property § 62

§ 8873. Wrongful taking, concealment, or disposition of property in estate

8873. A person who has wrongfully taken, concealed, or disposed of property in the estate of the decedent 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 of property in the inventory 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). Designation 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 face value:

(1) Money, currency, and cash items. As used in this paragraph, 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 (as defined in Section 21) in financial institutions.

(4) Money market 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 property in the estate.

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 9 (1976).

Paragraphs (2) and (4) of subdivision (a) are new. The personal representative may appraise an item listed in paragraph (2) or (4), as well as items listed in paragraphs (1), (3), and (5), only if its fair market value can be determined solely from its face without calculation or reference to other sources. See introductory clause of subdivision (a). A money market account within the meaning of paragraph 4 may include a money market fund that is part of a brokerage account.

Subdivision (b) restates former Probate Code Section 605(c), and expands it to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate (for example where the probate referee is waived pursuant to Section 8903).

CROSS-REFERENCES

Definitions

Account § 21
Financial institution § 40
Personal representative § 58
Property § 62

§ 8902. Appraisal by probate referee

8902. Except as otherwise provided by statute:

(a) The personal representative shall deliver the inventory to the probate referee designated by the court, together with necessary supporting data to enable the probate referee to make an appraisal of the property in the inventory.

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

Comment. Subdivision (a) of Section 8902 codifies existing practice. A statutory exception to the duty to deliver an inventory to the probate referee occurs in the case of a waiver of appraisal by the probate referee. See Section 8903. 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).

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

Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920).

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 in the manner provided in this section.

(b) The personal representative may apply for a waiver either in the petition for appointment of the personal representative or in a separate petition filed in the administration proceedings, but the petition may not be made later than the time the personal representative delivers the inventory to the probate referee or four months after letters are first issued to a general personal representative, whichever occurs first. The petition shall have attached to it a copy of the proposed inventory and appraisal 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, together with the proposed inventory and appraisal, 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 inventory and appraisal attached to 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 specify the time within which the petition must be made, and to make clear that the inventory and appraisal attached to the petition is to be filed pursuant to Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Clerk to set matter for hearing § 7202

Definitions

Letters § 52

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 Commission will reexamine this section in light of Assembly Bill 2896 (Harris) if the bill passes.

§ 8904. Appraisal by independent expert

8904. (a) A unique, unusual, or special item of tangible personal property may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the 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 the appropriate commission, if any.

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 a written affirmation or a declaration under penalty of perjury. Code Civ. Proc §§ 2015.5-.6

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

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

8906. The probate referee who appraises property in the estate shall, upon demand by the personal representative or by a beneficiary:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise an item of property. The probate referee shall not disclose any information that was acquired by the probate referee subject to a statutory provision for confidentiality. 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 an item of property if the appraisal is contested, whether by objection pursuant to Section 8804, by tax audit, or otherwise. The probate referee may be entitled to an additional fee for services provided to justify the appraisal, to be agreed upon by the personal representative or beneficiary and referee. If the personal representative or beneficiary and the probate referee are unable to agree, the court shall determine what fee, if any, 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. The determination of an appropriate fee under subdivision (b) will depend in part upon the quality of the appraisal and whether the contest of the appraisal is reasonable.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Property § 62

§ 8907. Retention of records by probate referee

8907. A probate referee who appraises property in an estate shall retain possession of all appraisal reports and backup data used by the referee to appraise the property for a period of three years after the appraisal is filed. After three years, the probate referee shall offer to the beneficiaries of property information used by the referee to appraise the property. Any information not requested by the beneficiaries may be destroyed.

Comment. Section 8907 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Property § 62

Article 2. Designation and Removal of Probate Referee

§ 8920. Designation by court

8920. 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.

Comment. 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.

CROSS-REFERENCES

Definitions

Property § 62

§ 8921. Designation at request of personal representative

8921. The court may designate a person requested by the personal representative as probate referee, on a showing by the personal representative of good cause for the designation. The following circumstances are included within the meaning of good cause, as used in this section:

(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

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 particular 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, if experience with that person's office or staff (including office or staff shared with other probate referees) is generally 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).

§ 8923. Disqualification of probate referee

8923. The court may 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 who orders the designation.

(c) A person who is related to the judge who orders the designation 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.

§ 8924. Removal of probate referee

8924. (a) The court shall remove the designated probate referee on 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 the inventory to the probate referee.

(3) Any other cause provided by statute.

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

Comment. Section 8924 is new. Other causes provided by statute for removal of a probate referee include failure to make a timely appraisal or report. See Section 8942 (failure to make appraisal or report). If experience with all the probate referees in a particular office is unsatisfactory, a referee from that office can be removed pursuant to Section 8924 or designation of a referee from that office can be avoided pursuant to Section 8922 (discretion not to designate a person as probate referee).

CROSS-REFERENCES

Definitions

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

§ 8940. Time required for appraisal or status report

8940. (a) The probate referee shall promptly and with reasonable diligence appraise the property in the inventory that the personal representative delivers to the referee.

(b) The probate referee shall, not later than 90 days after delivery of the inventory, do one of the following:

(1) Return the appraisal to the personal representative.

(2) Make a report of the status of the appraisal. The report shall be delivered to the personal representative and filed with the court.

Comment. Sections 8940 to 8942 are new. They parallel Sections 12200 to 12205 (time for closing estate). The personal representative must deliver an inventory together with supporting data to the probate referee. Section 8902 (appraisal by probate referee). Subdivision (a) of Section 8940 requires the probate referee to act promptly and diligently in making the appraisal, which in the ordinary case should occur well before the 90 day period provided in subdivision (b) has run. The 90 day period provided in subdivision (b) should be viewed as an unusually long period and not as the norm for accomplishing the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8941. Report of status of appraisal

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

(b) On motion of the personal representative or probate referee, or on the court's own motion, the court shall hear the report.

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

(1) That the appraisal 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 probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced 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.

(4) That the personal representative be removed.

Comment. Sections 8940 to 8942 are new. They parallel Sections 12200 to 12205 (time for closing estate).

Reduction of the probate referee's commission under subdivision (c)(3) may be appropriate if the time taken was within the control of the referee and was not in the best interest of the estate or interested persons. In making such a determination, the court should take into account any previous action taken under this article as a result of the delay.

Removal of the personal representative under subdivision (c)(4) may be appropriate where the personal representative's failure to supply necessary information is hindering completion of the appraisal.

CROSS-REFERENCES

Definitions

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, on petition of the personal representative or on its own motion, cite the probate referee to appear before the court and show the reason 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 probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced 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.

Comment. Sections 8940 to 8942 are new. They parallel Sections 12200 to 12205 (time for closing estate).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Article 4. Commission and Expenses of Probate Referee

§ 8960. Payment of commission and expenses

8960. (a) 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.

(b) The probate referee may not withhold the appraisal until the commission and expenses are paid, but shall deliver the appraisal to the personal representative promptly upon completion.

(c) The commission and expenses of the probate referee are an expense of administration, entitled to the priority for payment provided by Section 11420, and shall be paid in the course of administration.

Comment. Subdivision (a) of Section 8960 restates a portion of the first sentence of the first paragraph of former Probate Code Section 609 without substantive change.

Subdivisions (b) and (c) are new. Section 11420 provides the highest priority for payment of expenses of administration, which take precedence over all other debts. A personal representative who fails to give the priority required by law to the commission and expenses of the probate referee is liable for the failure. Section [to be drafted] (liability of personal representative to administer estate according to law).

§ 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 shall file with the inventory a verified account of the referee's expenses.

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 8962 (maximum and minimum commissions).

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

Note. The Commission will review the small estate exception added by AB 2896 (Harris), if enacted.

§ 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 to the personal representative and persons who have requested special notice, 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.

§ 8963. Division of commission between referees

8963. If more than one probate referee appraises property in the estate, each is entitled to the share of the commission agreed upon by the referees or, absent an agreement, 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

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 Estate and Trust Code 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 Estate and Trust Code 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) and expanded to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate.

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 not continued; the procedure provided in the section was ignored in practice.

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 omitted because it was an obsolete relic from the inheritance tax function of probate referees.

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 Estate and Trust Code 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.

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 superseded by Estate and Trust Code Section 453 (protective orders and enforcement).

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 Estate and Trust Code 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. Subdivision (b) is not continued; the authority of the Controller to remove 10% of the probate referees in a county has not been used in modern times. Moreover, in a large county the terms of the probate referees are staggered so that the Controller will be able to replace probate referees continuously.

Probate Code § 1309 (repealed)

Comment. Former Probate Code Section 1309 is continued in Estate and Trust Code Section 405 (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 406(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 406(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.).