

Memorandum 86-203

Subject: Study L-1029 - Estate and Trust Code (Distribution and Discharge--comments on tentative recommendation)

The Commission approved its tentative recommendation relating to distribution and discharge in probate in May 1986 and distributed the tentative recommendation for comment. Attached to this memorandum as Exhibits 1-14 are the letters we received commenting on the tentative recommendation.

In addition to comments addressed to specific points in the draft statute, there were a number of general comments found in the letters. Keith P. Bartel of Burlingame (Exhibit 1) found the tentative recommendation "sensible." The Western Surety Company is "completely in agreement." The tentative recommendation was "approved" by John G. Lyons of San Francisco (Exhibit 6) and Harold Weinstock of Los Angeles (Exhibit 11). The Orange County Bar Association (Exhibit 13) agrees that the revisions should be made.

The comments in the letters that were addressed to specific points in the draft are analyzed in notes following the sections in the draft to which they relate. A few of the comments that related to purely typographical or technical points the staff has simply incorporated in the draft without further note. The staff has also made changes in the draft for purposes such as conformity with general notice provisions or with terminology in the remainder of the code.

Our objective is to revise the draft in light of the comments in order to develop a final recommendation for submission to the next legislative session.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

CARR, McCLELLAN, INGERSOLL, THOMPSON & HORN

ATTORNEYS AT LAW
SECURITY PACIFIC BUILDING
218 PARK ROAD, POST OFFICE BOX 513
BURLINGAME, CALIFORNIA 94011-0513
(415) 342-9600

July 3, 1986

California Law Revisions Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

ROBERT R. THOMPSON
ALBERT J. HORN
DAVID C. CARR
ARTHUR H. BREDENBEEK
NORMAN I. BOOK, JR.
QUENTIN L. COOK
ROBERT A. NESRIG
RICHARD C. BERRA
L. MICHAEL TELLEEN
LAGE E. ANDERSEN
KEITH P. BARTEL
MARK A. CASSANEGO
LAURENCE M. MAY
FENELPE C. GREENBERG
KRISTI COTTON SPENCE
ROBERT W. PAYNE
JAMES R. CODY
GWENDOLYN V. MITCHELL
PAUL M. KAWAKAMI
MARK D. MUDAK
DAVID M. MCKIN
JORDAN W. CLEMENTS
EDWARD J. WILLIG III

LUTHER M. CARR
FRANK B. INGERSOLL, JR.
CYRUS J. McMILLAN
OF COUNSEL

E. H. COSGRIFF
(1880-1947)
J. ED McCLELLAN
(1895-1985)

SAN FRANCISCO
(415) 434-4800

PALO ALTO
(415) 595-5440

TELECOPIER
(415) 342-7665

Dear Ladies and Gentlemen:

Re: Study L-1029

I have reviewed Study L-1029 and find the tentative recommendations to be sensible with one exception. I do not believe it would be appropriate to amend Probate Code §1080 so as to deprive claimants of the right to jury trial. I would urge that this right remain as part of the new section.

Very truly yours


Keith P. Bartel, for
CARR, McCLELLAN, INGERSOLL, THOMPSON & HORN

KPB:sh

Barbara A. Beck Law Corporation

5300 STEVENS CREEK BOULEVARD, SUITE 380

SAN JOSE, CALIFORNIA 95129

(408) 554-8686

BARBARA A. BECK
SCOTT R. MILLER

OF COUNSEL
MARILYN N. TAKETA

August 1, 1986

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-1029 The New Estate and Trust Code
(Distribution and Discharge)

Dear Sir:

This letter is from the Santa Clara County Bar Association Estate Planning, Probate and Trust Section, in response to your tentative recommendation dated May, 1986.

1) The committee felt that the right to a trial by jury should be retained under the Section 1100 proceedings and other areas of the Probate Code where they are now allowed. The feeling was that the jury should be the trier of facts.

2) It was felt that proposed Section 11641 was a good change, and that there was no need for a supplemental account.

3) We believe Section 12200 is a misprint as this does reverse the current priority of Section 1025.5.

4) Under Section 12203, although it was understood that this was not a substantive change, there was a great deal of discussion about the effect this could have on delaying the estate and defeating the Testator's intent, and also on the issue regarding fee payment as many counties will not allow the attorney's fees to be paid until the estate is closed. Possibly this is an item for the revised sections on fees.

5) It was felt that there is a need in the Probate Code for a definition of the word "receipt" and also for "close of administration". It was suggested that there should be some alternative method in the Code of allowing an affidavit by the personal representative to show that the distributions have been made when it proves impractical or impossible to obtain a receipt from a recalcitrant distributee.

Very truly yours,

Barbara Beck

BARBARA A. BECK

BAB:mlp

**Matthew Bender**

**Matthew Bender
& Company, Inc.**
2101 Webster Street
Post Office Box 2077
Oakland, CA 94604
(415) 446-7100

July 28, 1986

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-1029: Tentative Recommendations Relating to
Distribution and Discharge

Gentlemen:

Thank you for the above-referenced proposal.

§§ 11641, 11750(a), 11753, 12250 (receipts; property acquired or discovered after order for distribution). I approve generally of the new scheme to expedite distribution and discharge, including distribution of after-acquired or discovered property, but I think §§ 11750(a) and 11250 should include the words "and any subsequent orders or instructions" after "court order for [final] distribution"

§ 11704 (Determination of Persons Entitled to Distribution). The right to a jury trial is an important one. For those determinations, probably the majority, which are equivalent to contractual interpretation by declaratory relief, I agree that jury trial is not appropriate. However, it seems important to preserve the right to jury trial in those situations in which identity of a particular person [see, e.g., Bales v Superior Court 21 Cal2d 17; Estate of Barton 16 Cal App2d 246] or fulfillment of a condition, rather than construction of the document, is the determinative issue.

§ 11624 (Costs of Preliminary Distribution). I agree; the court should have discretion with respect to the imposition of costs on petition for preliminary distribution.

§ 11801(a) (Distribution to heirs of deceased distributees). Why would you distribute something to a distributee not named in the order of distribution? Does this refer to a member of a class described in the order?



Matthew Bender

July 28, 1986

Page 2

§ 11850(a) (Payment to county treasurer-90 days). 90 days does not seem long enough for some ordinary "no fault" situations such as a distributee vacationing out of the country or when shipping arrangements have to be made for artworks or large pieces of furniture. It also seems strange that the time runs from the final accounting rather than from the date of the order of distribution.

§ 11850(c) (Payment to county treasurer-minors). In the case of a minor distributee without a guardian, it would seem to be in the minor's best interests (procedure less cumbersome; interest income) that the procedure set forth in Prob. C § 3413 be used rather than that the inheritance be turned over to the county treasurer. The comment to proposed § 11850 implies that deposit with the county treasurer is only to be made if the minor without guardian is a nonresident and that the § 3413 procedure should be used for resident minors. If that is so, I think § 11850(c) should make it explicit.

§ 11952 (Partition Procedure). Having eliminated the Prob C § 1101 provisions regarding citations and answers, it is unclear whether interested persons can answer and how long they have to file appearances or be in default. I think answers should be preserved to set forth contentions. Is the notice referred to in proposed section § 11952(a) more or less than the 5-day notice in proposed § 11952(b)? It seems incongruous that a person entitled to notice under § 11952(a) could become entitled to less notice by filing an appearance.

§ 12203 (Continuation of administration for family allowance). Maybe § 12203 should incorporate the comment that nothing in it limits the power of the court to order a preliminary distribution.

Sincerely,

Beryl A. Bertucio
Senior Legal Writer

POST OFFICE BOX 188

RAWLINS COFFMAN
ATTORNEY AT LAW
RED BLUFF, CALIFORNIA 96080

TELEPHONE 527-2021
AREA CODE 916

July 24, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

Permit me to comment on Study L-1029:

1. At page 6, § 11601, notice of hearing, subsection (b): I see no reason to serve notice on the personal representative if he is the petitioner.

2. At page 13, § 11641: May I suggest that a provision be included to the effect that if more than 20 (?) years have elapsed since date of distribution and the property newly acquired or discovered is real property, the estate may be re-opened for the sole purpose of making a probate sale and distributing the net profits.

(NOTE: This often would simplify clearing title to the real property particularly if there are numerous devisees or heirs).

3. At page 25, § 11950: May I suggest that the last 8 words be omitted, namely, "and will avoid the distribution of undivided interests".

As you know, the probate court cannot ~~distribute~~ ^{partition} undivided interests in real property. Thus, if a disgruntled spouse devises his or her undivided one-half community interest to 11 nephews or nieces, the surviving spouse has no standing in court to partition the real property even though he or she has been assigned one or more portions of the spouse's estate. (See: Buckley vs. Superior Court, 102 Cal 6.)

4. At page 28, § 12200: I suspect the typist erred. Subsection (a) should apply when a federal estate tax return is not required. The 18 month provision in subsection (b) should apply when the federal estate tax return is required!

5. At page 32, § 12251: There are banks in California which refuse to furnish any information concerning a decedent's accounts or collections or whether a safe deposit box exists,

and the like, until letters have been issued. This can cause substantial expenses in the way of bonding and the like, when in truth and fact there may be no accounts, collections or safe deposit box. Such problems might be resolved if the banks in California were required, for informational purposes only, to honor the court order appointment of the personal representative ~~and~~ in the absence of letters testamentary or letters of administration.

Please keep me on your mailing list.

Very truly yours,


RAWLINS COFFMAN

RC:tm



Western Surety Company

Office of General Counsel

June 27, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

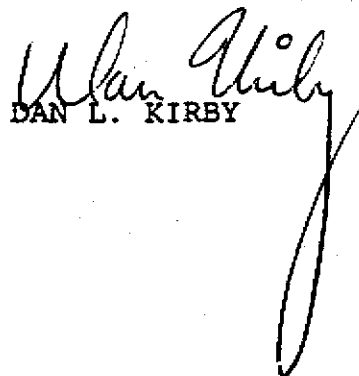
Gentlemen:

Re: Study L-1029 (Our File CA-3949)

Thank you for sending us the Tentative Recommendation relating to The New Estate and Trust Code (Distribution and Discharge). This Company is completely in agreement with the tentative recommendations set forth in Study L-1029. Specifically, we commend the provision of proposed §11622 regarding the bond to be required of distributees. We believe the draft provisions are more specific than, and represent a general improvement over, the provisions of current Probate Code §1001.

Please be good enough to keep us informed of subsequent revisions in these tentative recommendations.

Yours very truly,


DAN L. KIRBY

DLK:glh
cc: A-K Associates, Inc.

LAW OFFICES OF
VAUGHAN, PAUL & LYONS
1418 MILLS TOWER
220 BUSH STREET
SAN FRANCISCO 94104
(415) 392-1423

July 30, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-1029
New Estate and Trust Code
(Distribution and Discharge)

Gentlemen:

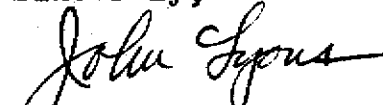
Thank you for sending me the above study.

With the few observations set forth below, I approve of the proposals included in the study.

Referring to the discussion on page 2 regarding unclaimed property, and the proposal to reduce the waiting period from one year to 90 days, I suggest that in proposed Section 11850(a) the waiting period should probably be longer than 90 days, but in any event the period should run not from the date of the final accounting, but from the date notice that final distribution has occurred is given to the distributee.

Referring to proposed Section 11623 which would supersede present Section 1004, I feel the proposal is not advisable. An ex parte petition should not be used before the four months period for filing claims has expired. Large claims may be filed shortly before the expiration of the four months period.

Sincerely,


JOHN G. LYONS

JGL:mr

MICHAEL P. MEARS
A PROFESSIONAL CORPORATION
ATTORNEY AT LAW
2001-22ND STREET, SUITE 210
BAKERSFIELD, CALIFORNIA 93301

(805) 323-1816

July 17, 1986

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middle Field Road, Suite D2
Palo Alto, CA 94303

Dear Mr. DeMouilly:

The following are the comments of the Probate and Estate Planning Section of the Kern County Bar Association on the tentative recommendations of the commission relating to the provisions of the proposed Estate and Trust Code on Distribution and Discharge. This letter contains only our comments to those recommendations which were objectionable or generated significant comment.

1. There was general agreement on the recommendations relating to elimination of supplementary accounting. However, we felt that there was a need for the establishment of some procedure to protect the beneficiary who wants a supplementary accounting, because we did not feel that the new provision should eliminate totally the fiduciary's duty to account in this situation.

We felt that there was some overlap between this change and the recommendation by which a personal representative becomes discharged simply by the filing of receipts at or before the time of the petition for discharge. For example, there would seem to be the possibility of undue influence of a personal representative who, not having a duty to file a supplementary accounting, is in a position to pressure the beneficiary to sign a receipt for the property to be distributed to him and any income accrued thereon.

2. We disagreed with the recommendation relating to the elimination of the right to jury trial in the determination of persons entitled to distribution. There should be a compelling reason for elimination of trial by jury and we should resist the temptation to "streamline" procedures at the expense of fundamental rights.

Thank you again for the opportunity to comment.

Very truly yours,


MICHAEL P. MEARS

MPM:pf

J. Earle Norris
Vice President and
Senior Claims Counsel

August 1, 1986

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road
Suite D-2
Palo Alto, CA 94303-4739

Re: California Law Revision Commission
Study L-1029 - Tentative Recommendation
Relating To The New Estate Trust Code
(Distribution and Discharge)

Dear Mr. DeMouilly:

I distributed the above-mentioned Tentative Recommendation to the various members of the Subcommittee that I chair for their comment. For your information I have received the following comments.

On page 18 of the Tentative Recommendation under Section 11801 (a) that section makes reference to a distribution to an unnamed deceased distributee. The comment received that this might create some difficulty in tracing the ownership in a chain of title examination. A title examiner normally looks at the Order of Distribution or Final Decree for the purposes of vesting of title.

Also, on page 18 with regards to Section 11801 (b), it is at least confusing. There was also concern expressed that the distribution of a share to a deceased distributee under this chapter may be void. It seems possible that a Court could unknowingly violate this section and cause a dispute to arise as to the ownership of property even though reliance was placed upon the Court's decree. It is felt that some reliance should be allowed to be placed upon a Court's decree when it is final for the protection of subsequent bonafide purchasers and encumbrancers for value.

Some concern was also stated with regards to Section 11955 contained on page 27 of the Tentative Recommendation. This section regards an equitable apportionment by the Court among the parties for the expenses

Letter to John H. DeMouilly
August 1, 1986
Page Two

of partition. The concern expressed was whether or not this is going to be a secret lien or is the lien going to be stated or set forth in the order of the Court and recorded in the County Recorder's office. Perhaps this could lend itself to some clarification.

As I have mentioned before, if I could be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "J. Earle Norris".

J. Earle Norris

JEN:elm

cc:Nathaniel Sterling
James Wickline
Clark Staves
H. Collyer Church
Members Of The Subcommittee

JEROME SAPIRO

ATTORNEY AT LAW

BUTTER PLAZA, SUITE 608

1388 BUTTER STREET

SAN FRANCISCO, CA, 94109-5416

(415) 928-1515

June 27, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA, 94303-4739

Re: Tentative Recommendation May 1986 re
The New Estate and Trust Code
(Distribution and Discharge)

Dear Commissioners:

I have received and reviewed your above-identified
Tentative Recommendation.

The following appear to create problems that should be
addressed:

1. §11623(b) relating to petition for preliminary
distribution where the personal representative has Independent
Administration of Estates Act authority provides that the
petition need not include an accounting for distribution to a
trustee if the trustee waives the accounting. This may lead
to an inference that an accounting may be required, even though
not directly so stated, in cases where there is no trustee. I
believe that it should be clearly stated that where the personal
representative has IAE Act authority, no account is required to
be filed with the petition for preliminary distribution. This
is the present practice.

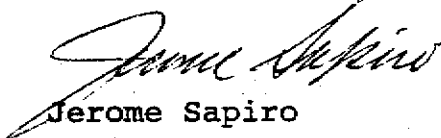
2. §11952 concerning parties and notice of hearing
relative to petitions to partition or allot property to avoid
distribution of undivided interests needs rewriting as to the
notice provisions. It should be clearly stated in the (a) part
what notice of the petition is required to be given to persons
entitled to distribution of the undivided interests and to the
personal representative. It does not do so. The (b) part gives
entitlement to notice of hearing to those who have filed appear-
ances, but this does not address the problem. All persons
entitled to undivided interests in the subject property should
be entitled to notice of the hearing and this should be clearly
set forth. Another problem in said section, (b) part thereof,
is the use of the word "default". Would a default have to be
requested to be entered? Should it not be when all persons
entitled to undivided interests have received the notice required
and proof has been filed showing that due notice has been given
in the manner required by law, whether such persons have appeared
or not, the matter may then be heard by the Court.

3. There is glaring error in §12200 (a) and (b).
Where no federal estate tax return is required, the period

should be one year; and where a federal estate tax is required the period should be eighteen months. This is the way it is under present Probate Code §1025.5. The times required for closing administration or a status report to have same remain open as stated in your proposed §12200 is incorrect. The longer period should be where a federal estate tax requirement exists.

Thanks again for allowing me to participate and to receive copies of your proposals.

Respectfully,


Jerome Sapiro

JS:mes

LAW OFFICES

ELLIOTT & WARD

Courthouse Square, Suite 580

1000 Fourth Street

San Rafael, California 94901

(415) 454-5656

ROBERT W. ELLIOTT

EDMOND C. WARD

JILL E. BERRYMAN

6/26/86

TO: California Law Revision Comm:

FROM: Edmond C. Ward

SUBJECT: Proposed Section 12200

☒ ENCLOSED PLEASE FIND: Copy of Proposed Section 12200 with my revisions.

☒ COMMENTS: Your draft appears to be a typographical error.

☐ FOR YOUR INFORMATION/FILES

☐ IN ACCORDANCE WITH YOUR REQUEST

☐ PLEASE SIGN AND RETURN

☐ PLEASE COMMENT

☐ PLEASE READ AND THEN TELEPHONE

☐ PLEASE FILE ORIGINAL AND RETURN
FILE ENDORSED COPIES

☐ PLEASE CALENDAR

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

§ 11956. Effect of division

11956. (a) The partition, allotment, or other division made by the court shall control upon proceedings for distribution, unless modified for good cause upon reasonable notice.

(b) The proceedings leading to the partition, allotment, or other division may be reviewed upon appeal from the order for distribution.

Comment. Section 11956 restates former Probate Code Section 1106 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

PART 11. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

§ 12200. Time required for closing or status report

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

(a) In an estate for which a federal estate tax return is required, within one year after the date of issuance of letters. NOT

(b) In an estate for which a federal estate tax return is not required, within 18 months after the date of issuance of letters.

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

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Verification required § 7203

BRIAN G. MANION
HAROLD WEINSTOCK*
BILL GENE KING
L. GLENN HARDIE**
LOUIS A. REISMAN
SUSSAN H. SHORE
MARTIN A. NEUMANN

WEINSTOCK, MANION, KING, HARDIE & REISMAN

A LAW CORPORATION

1886 CENTURY PARK EAST - SUITE 800

CENTURY CITY

LOS ANGELES, CALIFORNIA 90067

TELEPHONES (213)
879-4481 OR 553-8844

*CERTIFIED SPECIALIST - TAXATION LAW
CALIFORNIA BOARD OF LEGAL SPECIALIZATION
**CERTIFIED SPECIALIST - FAMILY LAW
CALIFORNIA BOARD OF LEGAL SPECIALIZATION


July 7, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

I have received the May, 1986, tentative recommendation relating to the New Estate and Trust Code (Distribution and Discharge). I have studied it and approve the recommendation.

Very truly yours,


Harold Weinstock

HW/sms

ELIZABETH R. McKEE
2911 Alta Mira Drive
Richmond, CA 94806
(415) 222-0383

Study L-1029 - \$12200 Time Required for Closing or Status Report:

I think you have reversed the required time period for filing
a status report: It should be

- (a) 18 months with Federal Estate Tax Return
 - (b) 12 months with no Federal Estate Tax Return
- (please check as this just might have been a clerical error.)

Memo 86-203

EXHIBIT 13
LAW OFFICES

PALMIERI, TYLER, WIENER & WILHELM

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

4000 MAC ARTHUR BOULEVARD

EAST TOWER - SUITE 1000

P. O. BOX 8090

NEWPORT BEACH, CALIFORNIA 92660

(714) 881-9400

WRITER'S DIRECT
DIAL NUMBER

TELECOPIER (714) 881-1854

TELEX: 8106018110

REFER TO FILE NO.

ANGELO J. PALMIERI*
ALAN M. WIENER*
ROBERT C. INHRE*
JAMES E. WILHELM*
DENNIS G. TYLER*
MICHAEL J. GREENE*
FRANK C. ROTHROCK*
DENNIS W. SHAN*
DAVID D. PARR*
CHARLES H. KANTER*ELINOR J. VOTAW
L. RICHARD RAWLS
PHILIP W. GREEN
DON FISHER
GREGORY N. WEILER
WARREN A. WILLIAMS
JOHN R. LISTER
THOMAS J. UMBERG
MICHAEL E. RIPLEY
NANCY L. VANDERLIP
STEVEN J. GOODHUE
PAUL R. JOHNSON
CYNTHIA M. WOLCOTTOF COUNSEL
GERARD C. BASTIAANSE*

*A PROFESSIONAL CORPORATION

August 25, 1986

RECEIVED
AUG 26 1986
CHEADLE & GARRETTCalifornia Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Dear Commission Members:

I was requested by William V. Schmidt to review Sections 11600 through 12252 of the tentative recommendations of your Commission relating to the new Estate and Trust Code (Distribution and Discharge). I have reviewed the tentative recommendations and, in general, agree that the revisions should be made subject to additional review by you as stated in the recommendations. I do have two comments, however.

Proposed Section 11621(b) states "the court shall not order distribution until any bond required pursuant to Section 11622 is filed." Do you really intend that the bond shall be filed prior to the hearing on the petition? If not, and you intend that distribution should not be made until the bond is filed, I suggest that the language of the subsection should be revised to provide that no distribution should be made by the personal representative until the required bond is filed.

Section 11703(d) appears ambiguous. Do you intend to say that the Attorney General shall be a person entitled to distribution if the estate involves a trustee of any trust who does not accept a trust? If not and you intend that the Attorney General would be entitled to distribution of the estate in the instance of a trustee who does not accept a charitable trust, the language should be clarified.

California Law Revision Commission
August 25, 1986
Page Two

In other respects, I am in agreement with the proposed recommendations.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Elinor J. Votaw".

Elinor J. Votaw
of PALMIERI, TYLER, WIENER & WILHELM

EJV:cb

cc: Richard Heaton, Esq.

LAW OFFICES

IRELL & MANELLA

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1800 AVENUE OF THE STARS

SUITE 900

LOS ANGELES, CALIFORNIA 90067-4276

(213) 277-1010 AND 879-2600

CABLE ADDRESS: IRELLA

TELEX 181258

TELECOPIER

(213) 277-5804 AND 553-9276

WRITER'S DIRECT DIAL NUMBER

ORANGE COUNTY OFFICE

840 NEWPORT CENTER DRIVE, SUITE 500

NEWPORT CENTER

POST OFFICE BOX 7310

NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (714) 760-0991

November 7, 1986

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94303

Re: Tentative Recommendation Relating to
Distribution and Discharge (Study
L-1029)

Dear John:

The following are some belated comments of a technical nature relating to the Tentative Recommendation on Distribution and Discharge. They are personal comments. I hope they will be of assistance to the Commission and the Staff.

The comments are by section and relate both to the wording of the particular proposed sections and the comments which follow.

The technical comments are as follows:

Section 11601: I believe subsection (b) would read more accurately if the words "if not the petitioner" were added at the end of the phrase. Subpart (d), I believe, would be more accurate if the words "all known" were added at the beginning of the sentence and the word "then" was inserted before the word "entitled." Subparagraph (e), I believe, would be clarified by inserting in the last sentence after the word "served" the following: "on the State Controller." This would make it clear that a copy of the latest account is not required to be served with the notice on other parties referred to in prior paragraphs.

Section 11602: I believe that after the word "person" the following should be added: "and any personal representative," since the definition of interested persons in Section 48 does not seem to include a personal representative. Section 11600 allows someone other than the personal representative to petition for distribution. The personal representative should be able to oppose that if appropriate.

Mr. John H. DeMouilly
November 7, 1986
Page Two

Section 11605: The concluding phrase of that section, namely, "concludes all interested parties," is found in existing Section 1003. Variations on that same language, however, with the same concept are found in existing Sections 1021 and 1057. I believe the language is clearer if it would read "is conclusive as to the rights of all interested persons."

Section 11621: Paragraph (b) states that a court shall not order distribution until any bond required pursuant to Section 11622 is filed. This seems inconsistent with Section 11622(a) which says that, if the court orders distribution before four months, the court shall require a bond or, if it is after four months after issuance of letters, the court may require a bond. Section 11621(b) seems to require that the bond be filed with the court before the court makes its order for distribution. I believe the concept here is that the order of distribution shall not be effective until a bond required by the order is filed. Some clarification, I believe, is needed in the language.

Section 11623: The brackets, I believe, should be removed from the language found in subparagraph (a) relating to notice pursuant to Section 1200.5. The language in subsection (b) could be clarified by inserting after the second word "trustee" in the second line the word "who" and inserting at the end the following additional language: "has consented to act."

Section 11624: The word "cost" in the first line, I believe, should be plural rather than singular as is the caption.

Section 11641: The comments suggest that this supersedes former Section 1020.5. I believe Section 1020.5 deals with the receipts and disbursements for the period covered by the court accounting to the time of the order of distribution. It is in essence a supplemental accounting to bring the accounting up to date at the time the court makes its order of distribution. That concept appears to be lost in the Tentative Recommendation. In many instances it was not observed and it was covered merely by attaching an informal accounting to the receipt to be signed by the distributee. New proposed Section 11641 introduces a different concept of after-discovered property, that is, property discovered after the court order for final distribution, and would relate to property covered by an omnibus clause in many instances. If the order does not

Mr. John H. DeMouilly
November 7, 1986
Page Three

dispose of the property by an omnibus clause, then it would seem appropriate to allow the personal representative to file a supplemental petition for distribution rather than a petition for instructions or as an alternate to a petition for instructions.

Section 11700: The comment indicates that this restates the first sentence of former Probate Code Section 1080 without substantive change. Section 1080 required the filing of this petition before the petition for final distribution was filed. A recent case held that that requirement was not jurisdictional. However, I believe the comment should indicate that there is a substantive change in this area from existing law.

Section 11701: Although the second sentence restates portions of existing Section 1080, I believe the sentence would be more accurate if it required notice of hearing to be given "to all devisees whose interest is effected thereby" and to "all known heirs then interested in the estate" rather than as stated. If it is a question of interpretation of the will for purposes of distribution, for example, if a number of specific devises have been paid and receipts are on file, those persons would have no further interest in the estate and notice to them would not seem necessary on a petition to determine heirship.

Section 11702: This section should be clarified to indicate that the matters are at issue at the time of hearing, even though a number of interested persons have not filed any written statement. In many situations not all parties who may be affected by the order actively participated. The code section should make it clear that the matter will proceed on the petition and any written statements filed by any interested person by the time of hearing and that no further pleadings by other parties are necessary. By not filing a written statement, the parties who do not appear simply consent to be bound by the court's decision. This section might also be clarified to indicate that the written statement may be in support of or in opposition to the petition on file.

Section 11703: Paragraph (d) presumably refers to a situation where no trustee designated in the instrument agrees to act. Mere declination of one trustee to act should not cause notice to be given to the Attorney General if other trustees are named in the instrument and consent to act. This might be clarified.

Mr. John H. DeMouilly
November 7, 1986
Page Four

Section 11704: Paragraph (a) states that the court shall consider "all papers" filed in the proceeding. Does this refer to a proceeding pursuant to this chapter or all papers in the probate file? I believe this paragraph should also refer to such testimony and other evidence as may be submitted in connection with the hearing as well as all papers filed in the proceeding. Presumably, the reference to "all papers" refers to the petition and any written statements in support or in opposition thereto.

Section 11705: The comment indicates that subdivision (b) restates former Section 1082 without substantive change. Section 1082, of course, refers to the matter as being conclusive during the remainder of the administration of the estate and upon any subsequent proceeding for distribution. Is this implicit in the current language of subdivision (b)?

Section 11751: Although not precisely in point, the comment might make reference to existing Section 1222.

Section 11752: The word "shall" in the third line might more appropriately be "may." In the last line after the word "inventory," the words "with the court" might be inserted. If a specific item is given to a distributee for life only with remainder to another person, no inventory would seem necessary. However, if the life tenant is, for example, given the furniture and furnishings in a residence, then a specific inventory is appropriate. Therefore, the word "shall" may appropriately be replaced by the word "may" to give greater flexibility depending upon the facts.

Section 11801: Subdivision (a) refers to "whether or not the deceased distributee is named." I believe the existing language of Section 1023 refers only to a distributee who is named in the order. This does represent some substantive change and perhaps the comment should reflect that change. Presumably this change would allow this section to apply to a distribution to a class, such as to issue or children.

Section 11850: Subdivision (a) should refer to the order of distribution rather than the final accounting. Under subdivision (c), is a parent of the minor a guardian for purposes of distribution? The section generally refers to "property" but, when read in the context of Section 11851, it may in fact only mean money, since presumably only money can be deposited with the County Treasurer with limited exceptions.

Mr. John H. DeMouilly
November 7, 1986
Page Five

Section 11851: Subdivision (b) indicates that personal property other than money may not be deposited with the County Treasurer except by order of court. This is indicated in the first sentence. The last sentence appears to state that personal property other than money must be deposited with the State Controller. Is there any inconsistency between these provisions? That is, when is it possible for personal property to be deposited with the County Treasurer rather than the State Controller if it is other than money?

Section 11854: Subdivision (a) would be clarified if at the end of the first sentence, the following language was added: "which made the order of distribution." Subdivision (a) states that the petition may be heard ex parte, but subdivision (b) requires that a copy of the petition be served on the Attorney General with 20-days' notice. Presumably, the matter could be heard ex parte only if the Attorney General waived notice in advance.

Section 11902: Subdivision (b) would be clarified by adding the following words at the end of the subdivision: "for each county in which the order was recorded."

Section 11952: Existing Section 1101 provides for a citation directing them to answer within 30 days. Section 11592 eliminates the citation and eliminates the 30-day period for a response. Yet, subdivision (b) refers to those who have appeared and those "in default." There is no way to measure when a party is in default under the present wording of the section, since there is no 30-day period to respond to the petition or citation. Some clarification therefore is needed.

Section 11953: Subdivision (a) states that the court "shall take evidence" and then provides for partition or division of the property. Presumably, the right to take evidence also applies to subdivision (b) but that is not clearly understood because of the structuring of subdivisions (a) and (b). Some clarification would be appropriate.

Section 11955: The title would be more accurate if it referred to "expenses."

Section 12200: The periods of time referred to in subparts (a) and (b) are reversed. There is 18 months where a federal estate tax return is required and 12 months where no return is required.

Mr. John H. DeMouilly
November 7, 1986
Page Six

Section 12201: The comment might indicate that an estimate of the time needed to close administration of the estate has been added as a requirement in subdivision (a). The comment indicates there is no substantive change. This is a new requirement.

Section 12203: Subdivision (a)(2): The language under existing Section 1026(b), which refers to "the decedent's heirs or the beneficiaries under the decedent's will," I believe is clearer than the language which merely states "decedent's beneficiaries."

Section 12205: The words "fees" and "commissions" in lines 6 and 7 should be reversed as to order to be consistent with earlier references to those same terms and to be consistent with the reference to Sections 901 and 910.

Section 12251: Subdivision (b) refers to "the hearing." It is unclear whether this can be heard ex parte or whether it is to be set for hearing and notice of hearing given to interested parties. The existing Section 1068 requires the clerk to set it for hearing which would indicate that notice would be given to all interested parties and the matter would be heard on the regular court calendar. Does this need clarification?

Section 12252: While the reference to Section 1200 is bracketed, I believe the correct reference in any event should be to Section 1200.5.

I hope these comments are still timely. Perhaps many of the items mentioned in this letter have been covered by a revision or new draft of the Tentative Recommendation since the time for comments expired several months ago.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd

cc: Lloyd Homer, Esq.
James Opel, Esq.
Irwin Goldring, Esq.
James Devine, Esq.
James Quillinan, Esq.

DISTRIBUTION AND DISCHARGE

The proposed law generally restates and reorganizes for clarity the existing provisions governing distribution of the decedent's estate and discharge of the personal representative. While the scheme of existing law is largely preserved, the proposed law does make numerous minor or technical improvements that are noted in the Comments following the draft provisions. The more significant substantive changes are discussed below.

Costs of preliminary distribution proceeding. If a beneficiary petitions for preliminary distribution, existing law imposes the cost of the proceeding on the beneficiary.¹ This may be inappropriate, for example, where the beneficiary is forced to make the petition because of undue delay by the personal representative. The proposed law gives the court discretion whether to impose costs on the beneficiary or to apportion them between the beneficiary and the estate, as may be appropriate to the circumstances.

Supplementary account. Even though there is a final order for distribution made upon the personal representative's final account, existing law provides for a supplementary account and settlement for receipts and disbursements occurring thereafter.² The proposed law avoids this awkward arrangement by simply providing that the personal representative is responsible for distribution pursuant to the court order for final distribution. This responsibility includes responsibility for proper disposition of income accruing during the distribution period. Where the court order fails to deal with after-acquired or after-discovered property, the personal

1. Prob. Code § 1002.

2. Prob. Code § 1020.5.

representative may petition for instructions if not yet discharged, or the estate may be reopened.

Determination of persons entitled to distribution. Existing law provides a special procedure for determination of persons entitled to distribution.³ The procedure includes a jury trial and special evidentiary rules. There is nothing so unique about the determination made in such a proceeding that requires rules that differ from the general rules of civil practice that govern all other probate procedures, or that precludes the court from making the determination. The proposed law provides for court determination of persons entitled to distribution and eliminates the special evidentiary rules found in existing law.

Deceased distributee. A special problem occurs where a named distributee of the decedent's property dies before the property is distributed. Ordinarily in that situation the property must be distributed to the deceased distributee's estate for further probate. However, existing law avoids the need for a second probate by allowing direct distribution to the deceased distributee's heirs where the distributee was an unmarried minor who died intestate.⁴ It would also be appropriate to allow direct distribution to the deceased distributee's heirs where the amount to be distributed to the heirs is small and the heirs present an appropriate affidavit under the provisions governing distribution of small estates without administration.⁵ The proposed law implements such a procedure.

Unclaimed property. If personal property ordered distributed remains unclaimed a year after the order, the property may be sold and the proceeds deposited with the county treasury for safekeeping.⁶ The one year delay is unnecessarily long, and the proposed law reduces the

3. Prob. Code §§ 1080-1082.

4. Prob. Code § 1022.

5. Prob. Code §§ 13000 et seq.

6. Prob. Code § 1062.

period of delay to 90 days. When the distributee appears to claim the proceeds, however, existing law requires a court order upon noticed hearing even though the claim is routine.⁷ The proposed law enables the order to be made ex parte, subject to court requirement of notice in appropriate cases.

Receipt of distributee. Before the personal representative may be discharged the personal representative must show the court that the estate property has been properly distributed.⁸ The proposed law replaces this requirement with a procedure by which the personal representative simply files receipts at or before the time of the petition for discharge. In the case of real property, identification of the record location of the court order for distribution or the personal representative's deed serves as a sufficient receipt.⁹

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

The proposed law also eliminates the existing requirement for production of satisfactory vouchers that the personal representative has performed all necessary acts.¹⁰ This requirement is largely ignored in practice. The personal representative's petition includes the same information and must be verified. In addition, the sureties on the bond of the personal representative remain liable.

7. Prob. Code § 1064.

8. Prob. Code § 1066.

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

10. Prob. Code § 1066.

Outline

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

- § 11600. Petition for distribution
- § 11601. Notice of hearing
- § 11602. Opposition to petition
- § 11603. Hearing and order
- § 11604. Distribution to person other than beneficiary
- § 11605. Conclusiveness of order

Article 2. Preliminary Distribution

- § 11620. Time for petition
- § 11621. Order for distribution
- § 11622. Bond
- § 11623. Distribution under Independent Administration of Estates Act
- § 11624. Costs of proceeding

Article 3. Final Distribution

- § 11640. Petition and order
- § 11641. After-acquired or after-discovered property

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

- § 11700. Petition
- § 11701. Notice of hearing
- § 11702. Responsive pleading
- § 11703. Attorney General as party
- § 11704. Hearing
- § 11705. Court order

CHAPTER 3. DISTRIBUTION TO PERSONS ENTITLED

- § 11750. Responsibility for distribution
- § 11751. Receipt for distributed property
- § 11752. Inventory by life tenant
- § 11753. Filing receipts and discharge

CHAPTER 4. DECEASED DISTRIBUTE

- § 11800. "Deceased distributee" defined
- § 11801. Distribution despite death of distributee
- § 11802. Manner of distribution

CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

- § 11850. When deposit with county treasurer authorized
- § 11851. Deposit of money; sale of personal property and deposit of proceeds
- § 11852. Receipt by county treasurer
- § 11853. Copy of order for distribution
- § 11854. Claim of property deposited in county treasury

CHAPTER 6. DISTRIBUTION TO STATE

- § 11900. Distribution to State of California
- § 11901. Distribution in trust for a class
- § 11902. Disposition of property distributed to state
- § 11903. Claims against property distributed to state
- § 11904. No deposit in county treasury

CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

- § 11950. Right to partition or allotment
- § 11951. Petition
- § 11952. Parties and notice
- § 11953. Disposition of property
- § 11954. Referees
- § 11955. Expenses
- § 11956. Effect of division

PART 11. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

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

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

- § 12250. Order of discharge
- § 12251. Discharge without administration
- § 12252. Administration after discharge

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

§ 11600. Petition for distribution

11600. The personal representative, a beneficiary, or other interested person may petition the court pursuant to this chapter for an order for preliminary or final distribution of the decedent's estate to the persons entitled thereto.

Comment. Section 11600 restates without substantive change a portion of the first sentence of former Section 1000 and a portion of the first paragraph of former Section 1020, with the exception of the reference to distribution of "priorities." For the time and manner prescribed for making a petition, see Sections 11620 (petition for preliminary distribution) and 11640 (petition for final distribution). See also Sections 12200-12206 (time for closing estate).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Interested person § 48
Person § 56
Personal representative § 58

§ 11601. Notice of hearing

11601. (a) Notice of the hearing on the petition shall be given as provided in Section 1220.

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

(4) The State Controller, if property is to be distributed to the state because there are no known beneficiaries or if property is to be distributed to a beneficiary whose whereabouts is unknown. A copy of the latest account filed with the court shall be served on the State Controller with the notice.

Comment. Subdivisions (a) to (c) of Section 11601 restate the third sentence of former Section 1000, the second paragraph of former Section 1020, and the second paragraph of former Section 1027, and supersede former Section 1200.5(12), increasing the notice period from 10 to 15 days. See also Sections 1206 (notice to known heirs or devisees) and 1252 (notice to be given to person requesting special notice).

Subdivision (d) restates the third paragraph of former Section 1027, except that the time of notice is reduced from 30 days to 15.

Notice must be delivered personally or sent by mail. Sections 1215-1216, 1220. See also Sections 1201 (notice not required to be given to oneself or persons joining in petition) and 1285 (clerk to set matter for hearing).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Devisee § 34
Heirs § 44
Person § 56
Personal representative § 58
Property § 62

Note. Rawlins Coffman of Red Bluff (Exhibit 4) sees no reason to serve notice of hearing on the personal representative if the personal representative is the petitioner. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) has the same concern. The staff agrees. That is why in our general notice provisions (Section 1201) we provide that a petitioner need not serve notice on himself or herself. We have referred to this general provision in the Comment to this section.

The reference to heirs in subdivision (c), Mr. Collier points out, should be limited to all "known" heirs who are "then entitled to succeed to any portion of the estate." We have revised the section to refer to known heirs, which also picks up the general provision that notice need not be given if the person's interest has been satisfied. Section 1206 (notice to known heirs or devisees). We have inserted a cross-reference to this provision in the Comment.

§ 11602. Opposition to petition

11602. The personal representative or any interested person may oppose the petition.

Comment. Section 11602 restates without substantive change a portion of the last sentence of former Section 1000 and a portion of the first paragraph of former Section 1020.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Note. We have added a reference in this section to the personal representative at the suggestion of Charles A. Collier, Jr., of Los Angeles (Exhibit 14). The reference was omitted from the original draft because "personal representative" was included in the definition of "interested person." Since that time the definition has been revised to omit the reference.

Ultimately it may be possible to omit this section altogether, if the general hearing procedure developed by the Commission is adequate.

§ 11603. Hearing and order

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including but not limited to an option granted pursuant to Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

Comment. Section 11603 restates portions of former Sections 584.3(e), 1001, and 1021 without substantive change. For the requirements for distribution, see Sections 11621 (preliminary distribution) and 11640 (final distribution).

§ 11604. Distribution to person other than beneficiary

11604. (a) This section applies where distribution is to be made to any of the following persons:

(1) The transferee of a beneficiary.

(2) Any person other than a beneficiary pursuant to an agreement, request, or instructions of a beneficiary or the attorney in fact of a beneficiary.

(b) The court on its own motion, or on motion of an interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.

(c) The court may refuse to order distribution or may order distribution upon such terms as the court deems just and equitable if the court finds either of the following:

(1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable.

(2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence.

(d) Notice of the hearing on the motion shall be served on the beneficiary and on the persons described in subdivision (a) at least 15 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, as the court may direct.

Comment. Section 11604 restates former Section 1020.1, increasing the notice from 10 days to 15 and standardizing the manner of notice with other provisions in the code.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Interested person § 48
Person § 56

§ 11605. Conclusiveness of order

11605. When a court order made under this chapter becomes final, the order binds and is conclusive as to the rights of all interested persons.

Comment. Section 11605 restates portions of former Sections 1003, 1021, and 1054. The court may correct clerical errors in orders as entered. Code Civ. Proc. § 473.

CROSS-REFERENCES

Definitions

Interested person § 48

Article 2. Preliminary Distribution

§ 11620. Time for petition

11620. A petition may be made for an order for preliminary distribution of all or a portion of the share of a decedent's estate to which a beneficiary is entitled when two months have elapsed after letters are first issued to a general personal representative.

Comment. Section 11620 restates a portion of the first sentence of former Section 1000. Distribution of all or a portion of the share to which a beneficiary is entitled includes a payment on account of the share. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). If distribution is made before four months have elapsed, the distributee must give a bond in the amount of the distribution. Section 11622(a) (bond). If distribution is made after four months have elapsed, the court may require the distributee to give a bond. See Section 11622(b) (bond).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Letters § 52

Personal representative § 58

§ 11621. Order for distribution

11621. (a) The court shall grant a petition made under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

(b) The court shall not order distribution until any bond required pursuant to Section 11622 is filed.

Comment. Section 11621 supersedes a portion of former Section 1001.

CROSS-REFERENCES

Definitions

Interested person § 48

Note. Both Charles A. Collier, Jr., of Los Angeles (Exhibit 14) and the Orange County Bar Association (Exhibit 13) point out that, if read literally, subdivision (b) would seem to require that a bond be given before the hearing and court order. Actually, the order should authorize distribution subject to the required bond being given. The staff would revise subdivision (b) to provide that, "No distribution shall be made pursuant to a court order for preliminary distribution until any bond required by Section 11622 is filed."

§ 11622. Bond

11622. (a) If the court orders distribution before four months have elapsed after letters are first issued to a general personal representative, the court shall require a bond. The bond shall be in the amount of the distribution.

(b) If the court orders distribution after four months have elapsed after letters are first issued to a general personal representative, the court may require a bond. The bond shall be in the amount the court fixes.

(c) Any bond required by the court shall be given by the distributee and filed with the court. The bond shall be conditioned on payment of the distributee's proper share of the debts of the estate, not exceeding the amount distributed.

Comment. Section 11622 supersedes a portion of former Section 1001.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Note. The Western Surety Company (Exhibit 5) commends this section; the draft provisions are more specific than, and represent a general improvement over, current law.

§ 11623. Distribution under Independent Administration of Estates Act

11623. Notwithstanding any other provision of this article:

(a) If authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400), the personal representative may petition the court for an order for distribution upon notice as provided in Section 1220.

(b) A petition under this section need not include an account for a distribution to a trustee if the trustee waives the account.

(c) The aggregate of all property distributed under this section shall not exceed 50 percent of the net value of the estate. For the purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total

amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

Comment. Section 11623 supersedes former Section 1004. The court may order reduced notice (Section 1203) or may prescribe an ex parte hearing (Section 1220(f)). Subdivision (c) makes clear that the total of all distributions under this section may not exceed 50% of the net value of the estate.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Subdivision (a) enables a preliminary distribution under independent administration on ex parte order, if the court so allows. John G. Lyons of San Francisco (Exhibit 6) does not feel this proposal is advisable. He is concerned about a large claim arriving just before expiration of the four month creditor claim period, where distribution has been made on ex parte order. He apparently fails to realize that notice may be eliminated only on court order, and that in any case a preliminary distribution requires a bond for protection of creditors. Moreover, this is not a change in existing law, since current Probate Code Section 1004 provides that "the court may order the notice to be given for a shorter period or dispensed with."

Jerome Sapiro of San Francisco (Exhibit 9) points out that there is an implication in subdivision (b) that an account is required where there is a distribution to a person other than a trustee. This implication is inappropriate, since existing law provides that the petition under Independent Administration "need not include an accounting" as a general rule, the exception being where a trustee is involved. Of course, this rule also carries an implication that an account is required as a general rule in the case of a petition other than under Independent Administration, which may be the practice in some places but is not a statutory requirement. The Commission should decide what the rule should be here, and then we will draft a clear one.

As a related matter, Charles A. Collier, Jr., of Los Angeles (Exhibit 14) would make clear that only a trustee who has consented to act may waive the account.

§ 11624. Costs of proceeding

11624. The costs of a proceeding under this article shall be paid by the distributee or the estate in such proportions as the court in its discretion determines.

Comment. Section 11624 supersedes former Section 1002. Under this section the allocation of costs is left to the court, whether or not the personal representative is the petitioner. One factor in the exercise of the court's discretion could be whether the personal

representative was negligent in failing to make prompt distribution, necessitating a petition under this chapter. For expenses of partition, see Section 11955.

Note. Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3) agrees with this section. "The court should have discretion with respect to the imposition of costs on petition for preliminary distribution."

Whether petitions under this article are extraordinary services for purposes of fees is subject to later review.

Article 3. Final Distribution

§ 11640. Petition and order

11640. (a) When debts have been paid and the estate is in a condition to be closed, a petition shall be made for, and the court shall make, an order for final distribution of the estate.

(b) The court shall hear and determine and include in the order all questions arising under Section 6174 (ademption) or Section 6409 (advancement).

Comment. Subdivision (a) of Section 11640 restates portions of former Section 956 and the first paragraphs of former Sections 1020 and 1027 without substantive change. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). Subdivision (b) restates a portion of former Section 1054 without substantive change. Unless there has been a waiver of accounts, the estate is not in a condition to be closed until final settlement of the accounts of the personal representative.

Note. One suggestion that was made in connection with the Commission's work on actual notice to creditors was that the petition for final distribution could include a declaration that the personal representative has given the required notice. Such a provision could be inserted here.

The staff would add the remainder of Probate Code Section 956 at this point in the statute. "If there are debts remaining unpaid or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for a reasonable time, subject to Chapter 1 (commencing with Section 12200) of Part 11 (time for closing estate)."

§ 11641. After-acquired or after-discovered property

11641. Any property acquired or discovered after the court order for final distribution is made shall be distributed in the following manner:

(a) If the order disposes of the property, in the manner provided in the order.

(b) If the order does not dispose of the property, either (i) in the manner ordered by the court upon a petition for instructions or (ii) pursuant to Section 12252 (administration after discharge), if the personal representative has been discharged.

Comment. Section 11641 supersedes former Section 1020.5 (supplementary account).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. This section provides a new method for dealing with after discovered property, replacing the supplementary account procedure of existing law. This change in law was felt to be a good one by the Santa Clara County Bar Association Estate Planning, Probate and Trust Section (Exhibit 2), which finds "no need for a supplemental account." The new scheme was also generally approved by Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3), and the Probate and Estate Planning Section of the Kern County Bar Association (Exhibit 7) was in general agreement.

However, neither the Kern County group, nor Rawlins Coffman of Red Bluff (Exhibit 4), nor Charles A. Collier, Jr., of Los Angeles (Exhibit 14) was satisfied that the replacement of the supplementary account is completely adequate. They point out a number of situations they do not believe are adequately covered by the new scheme:

(1) Between the time of the final account and the court order for distribution, according to Mr. Collier, there may be receipts and disbursements that should be covered by a supplemental account. Rather than a supplemental account, the staff would simply provide that the final account and petition for order for final distribution be made together. This approach, in fact, is embodied in the current draft of the accounting provisions (Memorandum 87-29), which provides that "The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed." Section 10951 (final account).

This point in the draft might be an appropriate place to insert a section that preserves the substance of the last portion of the second sentence of Probate Code Section 926:

On the settlement of a final account filed together with a petition for an order for final distribution of the estate, the personal representative may immediately distribute the property in the estate to the persons entitled to distribution, without further notice or proceedings.

(2) In the situation where the order for final distribution does not contain an omnibus clause and there is after-discovered property, the draft permits disposition of the property by court order on a petition for instructions. Mr. Collier suggests as an alternative or as a supplementary procedure that the personal representative file a

supplemental petition for distribution. The staff has no substantial problem with this suggestion, though we are slightly concerned about proliferating procedures to achieve the same end. We also note that there is a procedure in estate management for modification of an order that could be generalized and adapted to serve this purpose.

(3) The Kern County group felt that where after-discovered property is distributed under an omnibus clause, even though a supplemental account should not be required, a beneficiary should be permitted to obtain one on request. They note, for example, that without an account a beneficiary who is to receive some after-acquired property could be pressured by the personal representative to sign a receipt for the property without adequate knowledge of all the facts. The staff believes it would be appropriate to add a provision to enable the beneficiary to obtain a supplemental account from the personal representative on request.

(4) Mr. Coffman is concerned about the situation where there is after-discovered real property many years later, e.g. 20 years. In this case, instead of distributing the property under an omnibus clause or on court order, he would authorize re-opening the estate for the sole purpose of making a probate sale and distributing the net profits. "This often would simplify clearing title to the real property particularly if there are numerous devisees or heirs." This could be added as an option, though the staff would permit it only on a court determination that it would be for the best interests of the beneficiaries. In effect, this would be a distribution of the property by means of a partition by sale.

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

§ 11700. Petition

11700. At any time after letters are first issued to a general personal representative and before an order for final distribution is made, the personal representative, or any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim.

Comment. Section 11700 restates the first sentence of former Section 1080 without substantive change. A special administrator granted the powers, duties, and obligations of a general personal representative may not file a petition under this section if there is a will contest pending.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Letters § 52
Person § 56
Personal representative § 58

Note. The Comment to this section is not strictly accurate in its statement that the section restates a portion of Section 1080 "without substantive change." Section 1080 allows a petition to determine persons entitled to distribution up until a petition for final distribution is made, whereas this section purports to cut it off only when the order for final distribution is issued. This distinction became important in the recent case of *Estate of Stehr*, 181 Cal. App. 3d 1131 (1986). In that case a petition to determine heirship was made after the petition for final distribution was but before a final order was issued. The trial court dismissed the petition to determine heirship because it was not made within the time provided in Section 1080, but the Court of Appeal reversed, holding that the time limit is not jurisdictional.

We have changed the time in our present draft, and we do intend for it to be jurisdictional. See Section 11704 ("The court shall not hear or consider a petition filed after the time prescribed in Section 11700.") We would note in the Comment that, "Section 11700 restates the first sentence of former Section 1080, but permits a petition until a final order for distribution is made. That time limit, unlike the time limit of former Section 1080, is jurisdictional. See Section 11704 (hearing); cf. 11605 (conclusiveness of order); *Estate of Stehr*, 181 Cal. App. 3d 1131 (1986)."

Charles A. Collier, Jr., of Los Angeles (Exhibit 14) makes the same point.

§ 11701. Notice of hearing

11701. Notice of hearing shall be given as provided in Section 1220 to all of the following persons:

- (a) The personal representative.
- (b) All devisees.
- (c) All known heirs.

Comment. Section 11701 restates the third and fourth sentences of former Section 1080 without substantive change. See also Sections 1285 (clerk to set matter for hearing) and 1220 (manner of mailing notice of hearing).

CROSS-REFERENCES

Definitions

- Devisee § 34
- Heirs § 44
- Person § 56

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) would limit the persons to whom notice is given to "devisees whose interest is affected" and to "known heirs interested in the estate." He points out that if a number of specific devises have been paid and receipts are on file, those persons would have no further interest in the estate and notice to them would not seem necessary on a petition to determine heirship. The staff agrees and would accomplish the intent of the

proposed limitation by requiring notice to known heirs and known devisees, and including a cross reference to Section 1206 (notice to known heirs or devisees). See discussion in the Note to Section 11601, *supra*.

§ 11702. Responsive pleading

11702. Any interested person may appear and, at or before the time of the hearing, file a written statement of the person's interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed denied by each of the other claimants to the extent the allegations conflict.

Comment. Section 11702 restates the fifth and sixth sentences of former Section 1080 without substantive change.

CROSS-REFERENCES

Definitions

Interested person § 48

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) would augment this section as follows:

This section should be clarified to indicate that the matters are at issue at the time of hearing, even though a number of interested persons have not filed any written statement. In many situations not all parties who may be affected by the order actively participated. The code section should make it clear that the matter will proceed on the petition and any written statements filed by any interested person by the time of the hearing and that no further pleadings by other parties are necessary. By not filing a written statement, the parties who do not appear simply consent to be bound by the court's decision. This section might also be clarified to indicate that the written statement may be in support of or in opposition to the petition on file.

The staff has no problem with expanding the section as suggested, although we are in the process of developing general procedural provisions applicable to all probate hearings that may cover some of the matters suggested.

§ 11703. Attorney General as party

11703. The Attorney General shall be deemed to be a person entitled to distribution of the estate for purposes of this chapter if the estate involves or may involve any of the following:

(a) A charitable trust, other than a charitable trust with a designated trustee that may lawfully accept the trust.

(b) A devise for a charitable purpose without an identified beneficiary.

(c) An escheat to the State of California.

(d) A trustee who does not accept the trust.

Comment. Subdivisions (a)-(c) of Section 11703 restate the last sentence of former Section 1080 without substantive change. Subdivision (d) is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Devise § 32

Person § 56

Trust § 82

Trustee § 84

Note. The Orange County Bar Association (Exhibit 13) wonders whether subdivision (d) is really intended to apply to any trust or only to charitable trusts. The Commission did intend for subdivision (d) to apply to any trust where there is no trustee; perhaps it would be useful to add language to the Comment to emphasize this point.

Charles A. Collier, Jr., of Los Angeles (Exhibit 14) notes that where a trustee does not accept the trust, there may be a successor trustee named in the trust who does accept the trust, so that the Attorney General should not become involved. The staff notes that "trustee" is a defined term and includes a successor trustee. However, it may not be desirable just to rely on the definition. We would revised subdivision (d) to refer to a trust where no trustee has accepted the trust.

§ 11704. Hearing

11704. (a) The court shall hear and consider all papers filed in the proceeding, including any petition filed under Section 11700 and any statement of interest filed under Section 11702. The court shall not hear or consider a petition filed after the time prescribed in Section 11700.

(b) The personal representative may file papers and otherwise participate in the proceeding as a party to assist the court.

Comment. Section 11704 restates without substantive change the second sentence and the first portion of the third sentence of former Section 1081, except that prior court order is not required for participation of the personal representative. The provisions of former Section 1081 for jury trial and special rules of evidence are not continued. The procedure applicable in a proceeding under this chapter is that applicable to civil actions generally. Section 1283 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) notes that this section requires the court to consider papers filed in the "proceeding" but fails to refer to testimony and other evidence submitted in connection with the hearing. He would make clear that papers and other evidence submitted in connection with the hearing are to be considered. This appears appropriate to the staff, but again we note that we may be able to work out general hearing procedures for all Probate Code hearings that cover this matter.

The most significant point about this section is that it eliminates jury trial in heirship determinations. This feature was criticized by a number of commentators, whose comments were rather conclusionary. Keith P. Bartel of Burlingame (Exhibit 1) does not believe it would be "appropriate" to deprive claimants of the right to jury trial. The Santa Clara County Bar Association Estate Planning, Probate and Trust Section (Exhibit 2) felt the right to a jury trial should be retained here and in other areas where it is presently allowed; "The feeling was that the jury should be the trier of facts." The Probate and Estate Planning Section of the Kern County Bar Association (Exhibit 7) states, "There should be a compelling reason for elimination of trial by jury and we should resist the temptation to 'streamline' procedures at the expense of fundamental rights."

None of these commentators give any reasons for their conclusions. Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3) was somewhat more articulate in her comments. She states:

The right to a jury trial is an important one. For those determinations, probably the majority, which are equivalent to contractual interpretation by declaratory relief, I agree that jury trial is not appropriate. However, it seems important to preserve the right to jury trial in those situations in which identity of a particular person [see, e.g., *Bales v. Superior Court* 21 Cal2d 17; *Estate of Barton*, 16 Cal App2d 246] or fulfillment of a condition, rather than construction of the document, is the determinative issue.

The staff does not see why questions of identity or fulfillment of a condition are more appropriate for jury than judge determination. Jury trial is an expense and an imposition on society as a whole, and we fail to see the special importance of it in an heirship determination, other than to give the quarreling parties leverage for settlement purposes in their efforts to gain a larger share of the inheritance.

§ 11705. Court order

11705. (a) The court shall make an order that determines the persons entitled to distribution of the decedent's estate and specifies their shares.

(b) When the court order becomes final it is conclusive as to the matter determined.

Comment. Subdivision (a) of Section 11705 restates the last portion of the second sentence of former Section 1081 without substantive change. Subdivision (b) restates former Section 1082 without substantive change.

Note. Existing Section 1082 provides that the order is conclusive "upon the matters determined during the remainder of the administration of the estate and upon any subsequent proceeding for distribution." Charles A. Collier, Jr., of Los Angeles (Exhibit 14) wonders whether these concepts are implicit under the wording of subdivision (b). The staff believes they are; we could state this in the Comment.

CHAPTER 3. DISTRIBUTION TO PERSONS ENTITLED

§ 11750. Responsibility for distribution

11750. (a) The personal representative is responsible for distribution of the property in compliance with the terms of the court order for distribution.

(b) A distributee may demand, sue for, and recover from the personal representative or any person in possession, property to which the distributee is entitled.

Comment. Subdivision (a) of Section 11750 is new. In the case of a distribution to a trust, the trustee is the distributee. Cf. Section 34 ("devisee" defined). With respect to after-discovered or after-acquired property, see Section 11641. Subdivision (b) restates a portion of former Section 1021.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Note. Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3), would provide in subdivision (a) that distribution is to be made pursuant to the court order for distribution "and any subsequent orders or instructions." This would help implement the after-acquired property scheme.

§ 11751. Receipt for distributed property

11751. The personal representative shall obtain the receipt of the distributee for property in the estate distributed by the personal representative. In the case of real property, the personal representative shall record the court order for distribution or the personal representative's deed or both in the county in which the real property is located, and recordation of the order or deed is deemed to be a receipt for the property.

Comment. Section 11751 is new. Failure of the personal representative to record the court order for distribution of real property or the personal representative's deed does not affect title of the distributee.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) suggests cross-reference in the Comment to Section 1222 (recordation of order affecting title to real property). The staff believes this is appropriate, and will add the reference.

The Santa Clara County Bar Association Estate Planning, Probate and Trust Section (Exhibit 2) feels that there is a need for a definition of the word "receipt." They do not elaborate on the concern they have about the use of this term, except for a problem raised in connection with Section 11753 (filing receipts and discharge). See discussion below.

§ 11752. Inventory by life tenant

11752. If personal property in the possession of a distributee is subject to possession by the distributee for life only, the personal representative shall demand an inventory of the property from the distributee. Upon receipt, the personal representative shall file the inventory with the court and deliver a copy to any distributee of the remainder.

Comment. Section 11752 supersedes former Section 1065.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) observes that if a specific item of personal property is given to a distributee for life with remainder to another person, no inventory would appear to be necessary. But if the life tenant is given items such as furniture in a residence, then a specific inventory would be appropriate. He suggests, therefore, that this section provide that the personal representative "may" rather than "shall" demand an inventory. This would "give greater flexibility depending on the facts."

A significant reason for the inventory, the Commission felt, was to remind the distributee that the distributee has a life interest only in the property, and not absolute ownership. This would argue for an inventory in every case, notwithstanding the point made by Mr. Collier.

§ 11753. Filing receipts and discharge

11753. (a) Distribution in compliance with the court order entitles the personal representative to a full discharge with respect to property included in the order.

(b) The personal representative shall, before or at the time of the petition for discharge, file receipts for all property in the estate. In the case of real property, the personal representative shall file a statement that identifies the recording information for the court order for distribution or the personal representative's deed. As used in this subdivision, "recording information" means the date and place or location of the recording, and may include any other appropriate information.

Comment. Subdivision (a) of Section 11753 restates a portion of former Section 1003, but eliminates the reference to a personal representative "in this state." For provisions governing discharge of the personal representative, see Section 12250-12252 (discharge of personal representative).

Subdivision (b) is new. Recording information under subdivision (b) may include an instrument number and a book and page number where appropriate.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. The Santa Clara County Bar Association Estate Planning, Probate and Trust Section (Exhibit 2) notes that sometimes it proves impractical or impossible to obtain a receipt from a recalcitrant distributee. They suggest that there be an alternate method of allowing an affidavit by the personal representative to show that the distributions have been made in such a case. This may be desirable. On the other hand, the personal representative would have the option of withholding distribution if the beneficiary refuses to give a receipt. See Section 11850 (deposit with county treasurer where distributee refuses to give receipt). This would not be possible, of course, where the beneficiary is already in possession of the property.

CHAPTER 4. DECEASED DISTRIBUTE

§ 11800. "Deceased distributee" defined

11800. As used in this chapter, "deceased distributee" means a beneficiary who survives the decedent but dies before distribution of the share of the decedent's estate to which the beneficiary is entitled.

Comment. Section 11800 incorporates portions of former Sections 1022 and 1023. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Beneficiary § 24

§ 11801. Distribution despite death of distributee

11801. (a) Except as provided in subdivision (b), distribution of a deceased distributee's share of the decedent's estate shall be made pursuant to this chapter, whether or not the deceased distributee is named in the order for distribution, with the same effect as though the distribution were made to the deceased distributee while living.

(b) Distribution of the share of a deceased distributee shall not be made pursuant to this chapter under a will that provides that a person is entitled to take under the will only if the person survives the date of distribution, and any purported distribution of the share of a deceased distributee pursuant to this chapter is void.

Comment. Section 11801 restates the second paragraph of former Section 1023 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Will § 88

Note. Subdivision (a) makes reference to a deceased distributee who is not named in the order for distribution. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) points out that this changes existing law, which is limited to named distributees. Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3) wonders why one would distribute something to an unnamed distributee. Both assume a class gift is implied. A California Land Title Association subcommittee (Exhibit 8) is concerned that this might create some difficulty in tracing ownership in a chain of title examination, since a title examiner looks to the order for distribution for purposes of vesting of title. In light of these comments, the staff suggests that the provision be limited to named distributees.

Subdivision (b) makes clear that distribution is not to be made to a deceased distributee if the will requires survival beyond the date of distribution in order to take. The title subcommittee doesn't think this is very clear; the staff will work on the drafting to see if it can be improved. The title subcommittee also has a substantive concern--subdivision (b) provides that distribution made in violation of such a will limitation is void. The subcommittee points out that subsequent bona fide purchasers and encumbrancers for value should be entitled to rely on a distribution made pursuant to court order, and

that calling the distribution "void" will cause problems. The staff agrees with this point and would delete the reference to void distributions. A distribution made pursuant to court order should have conclusive effect, and any liability for an improper distribution should fall on the personal representative. The staff believes a general provision should be added to the statute that codifies this rule for all purposes, not just for deceased distributees.

§ 11802. Manner of distribution

11802. The deceased distributee's share of the decedent's estate shall be distributed as follows:

(a) Except as otherwise provided in this section, distribution shall be made to the personal representative of the estate of the deceased distributee for the purpose of administration in the estate of the deceased distributee.

(b) If the deceased distributee was issue of the decedent and died intestate while under the age of majority and not having been married, distribution shall be made directly to the heirs of the deceased distributee without administration in the estate of the deceased distributee.

(c) If a person entitled to the deceased distributee's share makes application pursuant to Division 8 (commencing with Section 13000) (disposition of estate without administration), distribution shall be made pursuant to Division 8.

Comment. Subdivision (a) of Section 11802 restates the first paragraph of former Section 1023 without substantive change. Subdivision (b) restates former Section 1022 without substantive change. Subdivision (c) is new.

CROSS-REFERENCES

Definitions

Heirs § 44

Person § 56

Personal representative § 58

CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

§ 11850. When deposit with county treasurer authorized

11850. Subject to Section 11851, the personal representative may deposit property to be distributed with the county treasurer of the county in which the proceedings are pending in the name of the distributee in any of the following cases:

(a) The property remains in the possession of the personal representative unclaimed for 90 days after the final accounting.

(b) The distributee refuses to accept or give a receipt for the property.

(c) The distributee is a minor or incompetent person who has no guardian, conservator, or other fiduciary to receive the property or person authorized to give a receipt for the property.

(d) For any other reason the property cannot be distributed, and the personal representative desires discharge. Notwithstanding any provision of Section 11851, deposit may not be made pursuant to this subdivision except upon court order.

Comment. Section 11850 supersedes portions of former Sections 1060 and 1062. Section 11850 omits reference to a distributee who resides out of the state. Distribution should be made to the named distributee or any known assignee of the named distributee, regardless of the place of residence of the distributee. If the distributee is a nonresident minor or nonresident incompetent person who has a guardian, conservator, or other fiduciary of the estate legally appointed under the law of another jurisdiction, the distribution of the person's share should be made to the fiduciary. Cf. former Section 1061.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Note. Both Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3) and Charles A. Collier, Jr., of Los Angeles (Exhibit 14) point out that the 90 day deposit period in subdivision (a) should run from the date of the order for distribution rather than the date of the final accounting. This seems appropriate to the staff. John G. Lyons of San Francisco (Exhibit 6) would run the 90 day period from the date notice of final distribution is given to the distributee. Since such a notice is not statutorily required, the staff is reluctant to bring that concept into it.

Both Ms. Bertucio and Mr. Lyons believe 90 days is too short, in any event. Ms. Bertucio points out that "90 days does not seem long enough for some ordinary 'no fault' situations such as a distributee vacationing out of the country or when shipping arrangements have to be made for artworks or large pieces of furniture." Existing law provides one year.

Subdivision (c) provides for deposit with the county treasurer in case of a minor who has no guardian. Mr. Collier raises the possibility of distribution to the parent of a minor; Ms. Bertucio notes the availability of controlled accounts, Uniform Transfers to Minors Act dispositions, and other means of distribution for a minor

under Probate Code Section 3413. The staff believes these are good points. The Probate Code protective proceedings provisions now provide a complete means for distribution to a minor without a guardian, and this system is preferable to deposit in the county treasury. The staff would remove minors from subdivision (c), and cross-refer to Section 3413 in the Comment.

Mr. Collier also points out that personal property, unlike money, is not directly deposited with the county treasury. See Section 11851. The staff will revise the sections to avoid the implication that personal property might be deposited with the county treasurer.

§ 11851. Deposit of money; sale of personal property and deposit of proceeds

11851. (a) If property authorized by Section 11850 to be deposited with the county treasurer consists of money, the personal representative may deposit the money.

(b) If property authorized by Section 11850 to be deposited with the county treasurer consists of personal property other than money, the personal representative may not deposit the personal property except upon court order. If it appears to the court that sale is for the benefit of interested persons, the court shall order personal property sold, and the proceeds of sale, less expenses of sale allowed by the court, shall be deposited in the county treasury. If it appears to the court that sale is not for the benefit of interested persons, the court shall order personal property deposited with the State Controller, to be held subject to the provisions of Chapter 6 (commencing with Section 11900).

Comment. Section 11851 supersedes portions of former Sections 1060 and 1062.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Note. It is not clear whether interest earned on deposits with the county treasurer under these provisions is to be credited to the persons entitled to the money or whether the interest goes to the county general fund. There is no statutory law on point that we have been able to discover. Government Code Section 53844 provides a general rule that all interest earned on funds in the county treasury is credited to the general fund of the county, with specific exceptions such as eminent domain deposits. However, a recent case relating to deposits in court in civil actions under Code of Civil Procedure Section 573 holds that interest must be credited to the person entitled

to the deposit. *Fresno Fire Fighters v. Jernagan*, 177 Cal. App. 3d 403, 222 Cal. Rptr. 886 (1986). The relevant provision of Section 573 is that money deposited in court must be deposited "with the county treasurer, to be held by him subject to the order of the court. The treasurer must keep each fund distinct, and open an account for each." The *Fresno Fire Fighters* holding is not necessarily applicable to deposits in probate, since part of the rationale of the decision is that Section 573 provides specifically for a separate account, which probate law does not. The staff believes that if we wish to provide for interest on the deposit in probate to go to the beneficiaries, we must provide for this specifically.

§ 11852. Receipt by county treasurer

11852. The county treasurer shall give a receipt for a deposit made pursuant to this chapter and is liable on the official bond of the county treasurer for the money deposited. The receipt has the same force and effect as if executed by the distributee.

Comment. Section 11852 restates the last portions of former Sections 1060 and 1062, except that the provision for a receipt having the effect of a voucher is not continued. Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

§ 11853. Copy of order for distribution

11853. If money is deposited or is already on deposit with the county treasurer, the personal representative shall deliver to the county treasurer a certified copy of the order for distribution.

Comment. Section 11853 restates former Section 1060.1 without substantive change and supersedes former Section 1224. Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11854. Claim of property deposited in county treasury

11854. (a) A person may claim property on deposit in the county treasury by filing a petition with the court that made the order for distribution. The petition shall show the person's claim or right to the property. The petition shall state the facts required to be stated

in a petition filed under Section 1355 of the Code of Civil Procedure. Upon the filing of the petition, the same proceedings shall be had as are required by that section, except that the hearing shall be ex parte unless the court orders otherwise.

(b) At least [20] days before the hearing of the petition, a copy of the petition shall be served on the Attorney General. The Attorney General may answer the petition, at the Attorney General's discretion.

(c) If the court is satisfied of the claimant's right to the property claimed, the court shall make an order establishing the right. Upon presentation of a certified copy of the order, the county auditor shall draw a warrant on the county treasurer for the amount of money covered by the order.

(d) A claim for money distributed in the estate of a deceased person made after the deposit of the property in the State Treasury is governed by the provisions of Chapter 3 (commencing with Section 1335) of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 11854 restates subdivision (a) of former Section 1064, but omits the provisions relating to property other than money deposited with the county treasurer. Such property may be deposited with the State Controller. See Section 11850 (when deposit with county treasurer authorized). Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

Unlike the former provision, Section 11854 provides for an ex parte order, and substitutes a court order for the certificate of right.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Verification required § 1284

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) points out that subdivision (b), which provides for notice to the Attorney General, is inconsistent with subdivision (a), which provides for an ex parte hearing. He is correct, and subdivision (b) should be deleted consistent with the Commission's intent to provide for an ex parte hearing.

CHAPTER 6. DISTRIBUTION TO STATE

§ 11900. Distribution to State of California

11900. (a) The court shall order distributed to the State of California property in the estate not ordered distributed to the known beneficiaries.

(b) Insofar as practicable, any real property or tangible personal property shall be converted to money before distribution to the state.

Comment. Section 11900 restates the last portion of the first paragraph of former Section 1027 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

Real property § 68

§ 11901. Distribution in trust for a class

11901. If the court orders distribution of property in the decedent's estate to the State of California, and the order includes words that otherwise create a trust in favor of unknown or unidentified persons as a class, the distribution shall vest in the state both legal and equitable title to the property.

Comment. Section 11901 restates the fourth paragraph of former Section 1027 without substantive change. The title of the state pursuant to this section is subject to the right of persons to claim the property as provided in this chapter. See Section 11903 (claims against property distributed to state).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Trust § 82

§ 11902. Disposition of property distributed to state

11902. (a) If the court orders distribution to the State of California, the personal representative shall promptly:

(1) Deliver any money to the State Treasurer.

(2) Deliver any personal property other than money to the State Controller for deposit in the State Treasury.

(3) Cause a certified copy of the order to be recorded in the office of the county recorder of each county in which any real property is situated.

(b) At the time of making a delivery of property or recordation pursuant to this section, the personal representative shall deliver to the State Controller the recorded certified copy of the order for distribution.

Comment. Section 11902 restates without substantive change the fifth and sixth paragraphs of former Section 1027 and former Section 1028.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

Note. Subdivision (b) requires delivery to the State Controller of a "recorded certified" copy of the order for distribution. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) suggests that a copy be provided for each county in which the order was recorded. Actually, the staff suggests that subdivision (b) be revised to provide simply for delivery of a certified copy of the order: the order will only be recorded where there is real property, and multiple copies of the same order will not be useful.

§ 11903. Claims against property distributed to state

11903. (a) Property distributed to the state shall be held by the State Treasurer for a period of five years from the date of the order for distribution, within which time any person may claim the property in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(b) A person who does not claim the property within the time prescribed in this section is forever barred, and the property vests absolutely in the state, subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 11903 restates the eighth and ninth paragraphs of former Section 1027 without substantive change. It should be noted that under the general claim procedures of the Code of Civil Procedure, the limitations bar may be tolled as to minors and incompetent persons in some situations. See, e.g., Code Civ. Proc. § 1441.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 11904. No deposit in county treasury

11904. No deposit of property of an estate shall be made in the county treasury by a personal representative if any other property of the estate is or has been distributed to the State of California pursuant to this chapter, but the property that would otherwise be deposited in the county treasury shall be transmitted forthwith to the State Treasurer or State Controller as provided in this chapter.

Comment. Section 11904 restates the seventh paragraph of former Section 1027 without substantive change. See also Section 7642 (general rules governing administration of estates apply to public administrator). Section 11904 is intended for the convenience of the claimant of property in only having to deal with one governmental agency.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

§ 11950. Right to partition or allotment

11950. If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid the distribution of undivided interests.

Comment. Section 11950 restates former Section 1100 without substantive change. Both real and personal property are subject to division under this chapter. See Section 62 ("property" defined). It should be noted that partitioned property may not be distributed except pursuant to the general provisions for distribution.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Property § 62

Note. *Rawlins Coffman of Red Bluff (Exhibit 4)* notes that this section as phrased may imply that the probate court has jurisdiction to partition property not a part of the decedent's estate, such as

interests of other tenants in common. "Thus, if a disgruntled spouse devises his or her undivided one-half community interest to 11 nephews or nieces, the surviving spouse has no standing in court to partition the real property even though he or she has been assigned one or more portions of the spouse's estate." Mr. Coffman suggests that the words "and will avoid the distribution of undivided interests" be stricken from the statute. The staff suggests, instead, that it be made clear that only the interests of distributees may be partitioned, by addition of the words "in the property to be distributed" at the end. We would add language to the Comment clarifying this point.

§ 11951. Petition

11951. (a) A petition pursuant to this chapter may be filed with the clerk at any time before distribution of the affected property has been ordered.

(b) The petition shall:

(1) Describe the property.

(2) Give the names of the persons having or claiming undivided interests.

(3) State what the undivided interests are, so far as known to the petitioner.

Comment. Section 11951 restates the first and second sentences of former Section 1101 without substantive change, except that the petition may be filed before the time to make claims has expired.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 11952. Parties and notice

11952. (a) Notice of the hearing shall be given to the persons entitled to distribution of the undivided interests and to the personal representative. Any objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in Chapter 11 (commencing with Section 9860) of Part 5.

(b) When all persons in interest have appeared or are in default, the matter shall be heard by the court. The persons in interest who have filed written appearances shall be considered the parties to the proceeding and each is entitled to five days' notice of the hearing. No one shall be considered as a plaintiff or as a defendant.

Comment. Subdivision (a) of Section 11952 supersedes the third, fourth, and fifth sentences of former Section 1101. Subdivision (b) restates former Section 1102.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Person § 56

Personal representative § 58

Note. Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3), Jerome Sapiro of San Francisco (Exhibit 9), and Charles A. Collier, Jr., of Los Angeles (Exhibit 14), all point out that the notice provisions of this section are confused. The staff agrees. We would rewrite the section to read:

(a) Notice of the hearing shall be given as provided in Section 1220 to the personal representative and to the persons entitled to distribution of the undivided interests.

(b) At the hearing the persons entitled to distribution of the undivided interests shall be considered the parties to the proceeding whether or not they have appeared or filed a responsive pleading. No one shall be considered as a plaintiff or as a defendant.

(c) Any objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in Chapter 11 (commencing with Section 9860) of Part 5.

General procedural provisions being developed may enable us to eliminate some of the procedural detail from this section.

§ 11953. Disposition of property

11953. (a) The court shall take evidence and shall partition, allot, and divide the property so that each party receives property of a value proportionate to the party's interest in the whole.

(b) The court may direct the personal representative to sell property when, under the circumstances, sale would be more equitable than partition and when the property cannot conveniently be allotted to any one party. The sale shall be conducted in the same manner as other sales made during administration of an estate.

(c) Any two or more parties may agree to accept undivided interests.

Comment. Section 11953 restates former Section 1103 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) points out that the court is authorized to take evidence for a subdivision (a) determination but not for a subdivision (b) determination; there should be some restructuring of the statute. The staff believes that this illustrates the need for general procedural provisions, including a provision authorizing the court to take relevant evidence, applicable to all probate proceedings. The staff will include such a provision in the general procedure and delete it here, with a cross-reference over.

§ 11954. Referees

11954. (a) The court, in its discretion, may appoint one or three referees to partition property capable of being partitioned, if requested to do so by a party. The number of referees appointed must conform to the request of at least one of the parties.

(b) The referees shall have the powers and perform the duties of referees in civil actions for partition, and the court shall have the same powers with respect to their report as in such actions.

Comment. Section 11954 restates former Section 1104 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

§ 11955. Expenses

11955. The expenses of partition shall be equitably apportioned by the court among the parties, but each party must pay the party's own attorney's fees. The amount charged to each party constitutes a lien on the property allotted to the party.

Comment. Section 11955 restates former Section 1105 without substantive change. It is an exception to the general rules stated in Section 11624 (costs of proceeding).

CROSS-REFERENCES

Definitions

Property § 62

Note. A California Land Title Association subcommittee (Exhibit 8) is concerned about the possibility that the lien created by this section will be a secret lien. The staff will add language to the section that the lien shall be included and specified in the court order. See Code of Civil Procedure § 874.110-.120 (lien for costs in partition actions generally).

§ 11956. Effect of division

11956. (a) The partition, allotment, or other division made by the court shall control upon proceedings for distribution, unless modified for good cause upon reasonable notice.

(b) The proceedings leading to the partition, allotment, or other division may be reviewed upon appeal from the order for distribution.

Comment. Section 11956 restates former Section 1106 without substantive change.

PART 11. CLOSING ESTATE ADMINISTRATION

Note. The Santa Clara County Bar Association Estate Planning, Probate and Trust Section (Exhibit 2) feels there is a need to define "close of administration." The staff disagrees; it is just a generally useful term without real substantive effect, though there are references to the estate being "in a condition to be closed". The staff believes the statute functions adequately without a definition of the term.

CHAPTER 1. TIME FOR CLOSING ESTATE

§ 12200. Time required for closing or status report

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

(a) In an estate for which a federal estate tax return is required, within one year after the date of issuance of letters.

(b) In an estate for which a federal estate tax return is not required, within 18 months after the date of issuance of letters.

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

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Verification required § 1284

Note. About half of the commentators on the draft noticed that (a) and (b) are reversed. The personal representative should have one year where there is no estate tax return and 18 months where there is one. We will correct this in the next draft.

§ 12201. Report of status of administration

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

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

(b) The report shall be filed with the court. Notice of hearing of the report shall be given as provided in Section 1220 to persons then interested in the estate.

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

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

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

Comment. Section 12201 restates the second, third, and fourth sentences of former Section 1025.5, with the addition of an estimate of the time needed to close administration. Section 12201 also supersedes a portion of former 956 ("administration may continue for such time as may be reasonable").

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Verification required § 1284

§ 12202. Failure to petition or make report

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

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

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

CROSS-REFERENCES

Citations § 1240 et seq.

Definitions

Interested person § 48

Personal representative § 58

§ 12203. Continuation of administration to pay family allowance

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

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

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

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

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

CROSS-REFERENCES

Definitions

Beneficiary § 24

Interested person § 48

Note. The Santa Clara County Bar Association Estate Planning, Probate and Trust Section (Exhibit 2) was concerned about the policy of this section. "There was a great deal of discussion about the effect this could have on delaying the estate and defeating the Testator's intent, and also on the issue regarding fee payment as many counties will not allow the attorney's fees to be paid until the estate is closed." This provision was enacted on Commission recommendation to limit the possibility of a family allowance being extended indefinitely and consuming the estate, and not to encourage extensions for payment of the family allowance. In this connection,

it may be worthwhile to take the advice of Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3) to move from the Comment to the statute the note that the court is not precluded from ordering a preliminary distribution while a family allowance order is in effect.

Charles A. Collier, Jr., of Los Angeles (Exhibit 14) believes the reference in subdivision (a)(2) to the "decendent's beneficiaries" is not as clear as the reference in existing law to the "decendent's heirs or the beneficiaries under the decendent's will." The draft here uses the term in its defined sense (see the cross-references); Section 24 will define "beneficiary" to include an heir in the case of an intestate estate and a devisee in the case of a testate estate.

§ 12204. Failure of personal representative to comply with order

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

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

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 12205. Sanction for failure to timely close estate

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, upon the hearing for final distribution or for an allowance upon the commissions of the personal representative or upon the fees of the attorney, reduce the commissions or fees by an amount the court deems appropriate, regardless of whether the commissions or fees otherwise allowable under the provisions of Sections [901 and 910] would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative or attorney and was not in the best interest of the estate or interested persons. In making a determination pursuant to this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

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

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 12206. Testamentary limitation of time for administration

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

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

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

§ 12250. Order of discharge

12250. When the personal representative has complied with the terms of the order for final distribution and has filed the appropriate receipts, the court shall, upon ex parte petition therefor, make an order discharging the personal representative from all liability incurred thereafter.

Comment. Section 12550 restates former Section 1066, except that the provision for production of vouchers is not continued, and the petition is made ex parte. The estate is fully administered for purposes of this section when all sums of money due from the personal representative have been paid, all property of the estate has been distributed to the persons entitled pursuant to court order, and all the acts lawfully required of the personal representative have been performed. As to after-discovered property, see Section 11641 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Personal representative § 58

Verification required § 1284

Note. Beryl A. Bertucio, Senior Legal Writer with Matthew Bender (Exhibit 3), would provide that compliance be made with the order for final distribution "and any subsequent orders or instructions." This would help implement the after-acquired property scheme.

§ 12251. Discharge without administration

12251. (a) At any time after appointment of a personal representative and whether or not letters have been issued, the personal representative may sign and file a petition setting forth the fact that it appears there is no property of any kind belonging to the estate and subject to administration, and praying for the termination of further proceedings and for discharge of the personal representative.

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

Comment. Section 12251 restates former Section 1068 without substantive change. Proceedings may be taken under this section without the return of an inventory provided for by Part 3 (commencing with Section 8800). See subdivision (a) ("at any time").

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Property § 62

Verification required § 1284

Note. This section does not prescribe notice of hearing requirements. Charles A. Collier, Jr., of Los Angeles (Exhibit 14) suggests in this situation notice be given to all interested parties. The staff believes this is appropriate and will add this to the section.

The extent to which another person should be able to act for the personal representative will be governed by general provisions.

In connection with this section, Rawlins Coffman of Red Bluff (Exhibit 4) observes that, "There are banks in California which refuse to furnish any information concerning a decedent's accounts or collections or whether a safe deposit box exists, and the like, until letters have been issued. This can cause substantial expenses in the way of bonding and the like, when in truth and fact there may be no accounts, collections or safe deposit box. Such problems might be resolved if the banks in California were required, for informational purposes only, to honor the court order [of] appointment of the personal representative in the absence of letters testamentary or letters of administration." The staff wonders how big a problem this is. If the personal representative does not know of bank assets, they will not be part of the estimated value of the estate, hence not covered by a bond.

§ 12252. Administration after discharge

12252. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause:

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

(b) If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be served upon the State Controller as provided in Section 1220.

Comment. Section 12252 restates former Section 1067 without substantive change. As to after-discovered property, see Section 11641 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

COMMENTS TO REPEALED SECTIONS

CHAPTER 16. DISTRIBUTION AND DISCHARGE

Article 1. Preliminary Distribution

Probate Code § 1000 (repealed)

Comment. The introductory portion of the first half of the first sentence of former Section 1000 is restated in Sections 11620 (time for petition), 11621 (order for distribution), and 11622 (bond), which increase the 10 day notice period to 15 days. The remainder of the first half of the first sentence is restated without substantive change in Section 11600 (petition for distribution). The second half of the first sentence is superseded by Section 12530 (conditions for distribution).

The second sentence is restated without substantive change in Section 1285 (clerk to set matters for hearing). The third sentence is restated without substantive change in Section 11601 (notice of hearing). The fourth sentence is restated without substantive change in Sections 1215 (mailing) and 1216 (personal delivery). The last sentence is restated without substantive change in Sections 11602 (opposition to petition) and 9630 (authority of joint personal representatives to act).

Probate Code § 1001 (repealed)

Comment. Former Section 1001 is superseded by Sections 11603(a) (hearing and order), 11621 (order for distribution), and 11622 (bond).

Probate Code § 1002 (repealed)

Comment. Former Section 1002 is superseded by Section 11624 (costs of proceeding).

Probate Code § 1003 (repealed)

Comment. Former Section 1003 is restated in Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

Probate Code § 1004 (repealed)

Comment. Former Section 1004 is restated without substantive change in Sections 11623 (distribution under Independent Administration of Estates Act), 1285 (clerk to set matters for hearing), and 11621 (order for distribution).

Article 2. Final Distribution

Probate Code § 1020 (repealed)

Comment. The first sentence of former Section 1020 is restated without substantive change in Sections 11640 (petition and order) and 11600 (petition for distribution). The second sentence is restated without substantive change in Sections 11602 (opposition to petition) and 9630 (authority of joint personal representatives to act). The third sentence is restated in Section 11601 (notice of hearing), which

increases the 10 day notice period to 15 days. The fourth sentence is restated without substantive change in Sections 1215 (mailing) and 1216 (personal delivery).

Probate Code § 1020.1 (repealed)

Comment. Former Section 1020.1 is restated in Section 11604 (distribution to person other than heir or devisee), increasing the time of notice from 10 to 15 days and standardizing the manner of notice with other provisions in the code.

Probate Code § 1020.5 (repealed)

Comment. Former Section 1020.5 is not continued; it is superseded by Sections 11750 (responsibility for distribution), 11753 (filing receipts and discharge), and 11641 (after-acquired or after-discovered property).

Probate Code § 1021 (repealed)

Comment. Former Section 1021 is restated without substantive change in Sections 11603(b) (hearing and order) and 11605 (conclusiveness of order and distribution).

Probate Code § 1022 (repealed)

Comment. Former Section 1022 is restated in Sections 11800-11802 (deceased distributee) without substantive change.

Probate Code § 1023 (repealed)

Comment. Former Section 1023 is restated in Sections 11800-11802 (deceased distributee) without substantive change.

Probate Code § 1024 (repealed)

Comment. Former Section 1024 is not continued, because it is unnecessary. Payment of taxes is an obligation of the personal representative (Section 9650), and the estate may not be distributed unless obligations of the estate are accommodated (Section 11621 (order for distribution)).

Probate Code § 1025 (repealed)

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

Probate Code § 1025.5 (repealed)

Comment. The first sentence of the first paragraph of former Section 1025.5 is restated without substantive change in Sections 12200 (time required for closing or status report), 1284 (verification required), and 12201 (report of status of administration). The substance of the second, third, and fourth sentences is restated without substantive change in Section 12201 (report of status of administration).

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

Probate Code § 1026 (repealed)

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

Probate Code § 1027 (repealed)

Comment. The first sentence of former Section 1027 is restated without substantive change in Section 11640 (petition and order). The remainder of the first paragraph is restated without substantive change in Section 11900 (distribution to State of California).

The first sentence of the second paragraph is restated in Section 11601 (notice of hearing). The second sentence is restated without substantive change in Sections 1215 (mailing) and 1216 (personal delivery).

The third paragraph is restated without substantive change in Section 11601 (notice of hearing), except that the provision for 30 days notice is not continued. The fourth paragraph is restated without substantive change in Section 11901 (distribution in trust for a class). The fifth and sixth paragraphs are restated without substantive change in Section 11902 (disposition of property distributed to state). The seventh paragraph is restated without substantive change in Sections 11904 (no deposit in county treasury) and 7642 (general rules governing administration of estates apply to public administrator). The eighth and ninth paragraphs are restated without substantive change in Section 11903 (claims against property distributed to state).

Probate Code § 1028 (repealed)

Comment. Former Section 1028 is restated without substantive change in Section 11902 (disposition of property distributed to state).

Article 3. Distribution in Satisfaction of Certain Bequests

Probate Code § 1030 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code 1031 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1032 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1033 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1034 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1035 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1036 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1037 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1038 (repealed)

Comment. [See marital deduction gift recommendation.]

Probate Code § 1039 (repealed)

Comment. [See marital deduction gift recommendation.]

Article 4. Estates of Nonresidents

Probate Code § 1040 (repealed)

Comment. [See nonresident decedent recommendation.]

Probate Code § 1041 (repealed)

Comment. [See nonresident decedent recommendation.]

Probate Code § 1042 (repealed)

Comment. [See nonresident decedent recommendation.]

Probate Code § 1043 (repealed)

Comment. [See nonresident decedent recommendation.]

Probate Code § 1043a (repealed)

Comment. [See nonresident decedent recommendation.]

Article 5. Advancements and Ademptions

Probate Code § 1054 (repealed)

Comment. Former Section 1054 is restated without substantive change in Sections 11640 (petition and order) and 11605 (conclusiveness of order and distribution).

Probate Code § 1055 (repealed)

Comment. [To be drafted. This provision should go among the transitional provisions.]

Article 6. Discharge

Probate Code § 1060 (repealed)

Comment. The first portion of former Section 1060 is superseded by Section 11850 (when deposit with county treasurer authorized). The last portion is restated without substantive change in Section 11852 (receipt by county treasurer), except that the provision of a receipt having the effect of a voucher is not continued.

Probate Code § 1060.1 (repealed)

Comment. Former Section 1060.1 is restated without substantive change in Section 11853 (copy of order for distribution).

Probate Code § 1061 (repealed)

Comment. Former Section 1061 is superseded by Section 11850 (when deposit with county treasurer authorized).

Probate Code § 1062 (repealed)

Comment. Former Section 1062 is superseded by Sections 11850 (when deposit with county treasurer authorized), 11851 (deposit of money; sale of personal property and deposit of proceeds), and 11852 (receipt by county treasurer).

Probate Code § 1063 (repealed)

Comment. Former Section 1063 is not continued.

Probate Code § 1064 (repealed)

Comment. Subdivision (a) of former Section 1064 is restated without substantive change in Section 11854 (claim of property deposited in county treasury). Subdivision (b) is not continued; it provided an infrequently used alternate procedure.

Probate Code § 1065 (repealed)

Comment. Former Section 1065 is not continued. For the receipt of the distributee, see Section 11751 (receipt for distributed property).

Probate Code § 1066 (repealed)

Comment. Former Section 1066 is restated without substantive change in Section 12250 (order of discharge), except that the provision for production of vouchers is not continued and the petition is made ex parte.

Probate Code § 1067 (repealed)

Comment. Former Section 1067 is restated without substantive change in Section 12252 (administration after discharge).

Probate Code § 1068 (repealed)

Comment. Former Section 1068 is restated without substantive change in Sections 12251 (discharge without administration), 1284 (verification required), and 1285 (clerk to set matter for hearing).

CHAPTER 17. DETERMINATION OF HEIRSHIP

Probate Code § 1080 (repealed)

Comment. The first sentence of former Section 1080 is restated without substantive change in Section 11700 (petition). The second and third sentences are superseded by Section 11701 (notice of hearing). The fourth and fifth sentences are restated without substantive change in Section 11702 (responsive pleading). The last sentence is restated without substantive change in Section 11703 (Attorney General as party).

Probate Code § 1081 (repealed)

Comment. The first sentence of the first paragraph of former Section 1081, providing for jury trial, is not continued. The second and third sentences are restated without substantive change in Sections 11704 (hearing) and 11705 (court order). The second paragraph is superseded by Section 1283 (general rules of practice govern).

Probate Code § 1082 (repealed)

Comment. Former Section 1082 is restated without substantive change in Section 11705(b) (court order).

CHAPTER 18. PARTITION BEFORE DISTRIBUTION

Probate Code § 1100 (repealed)

Comment. Former Section 1100 is restated without substantive change in Sections 11950 (right to partition or allotment) and 62 ("property" defined).

Probate Code § 1101 (repealed)

Comment. The first and second sentences of Section 1101 are restated without substantive change in Section 11951 (petition). The third, fourth, and fifth sentences are superseded by subdivision (a) of Section 11952 (parties and notice).

Probate Code § 1102 (repealed)

Comment. Former Section 1102 is restated without substantive change in Section 11952 (parties and notice).

Probate Code § 1103 (repealed)

Comment. Former Section 1103 is restated without substantive change in Section 11953 (disposition of property).

Probate Code § 1104 (repealed)

Comment. Former Section 1104 is restated without substantive change in Section 11954 (referees).

Probate Code § 1105 (repealed)

Comment. Former Section 1105 is restated without substantive change in Section 11955 (costs).

Probate Code § 1106 (repealed)

Comment. Former Section 1106 is restated without substantive change in Section 11956 (effect of division).