

Memorandum 87-17

Subject: Study L-1041 - Amendments to AB 708 (Conforming Revisions and Miscellaneous Amendments)

Attached to this memorandum is a set of amendments to conforming revisions in AB 708 and also some miscellaneous amendments. Most of these amendments are purely technical or correct typographical errors.

Several amendments have an important impact. Amendments 9 to 11 substitute the standard 15-day notice period for the existing 10-day period in Probate Code Sections 327 (time for hearing on petition for probate), 328 (petition for probate) and 333 (form of notice). Whether these 10-day periods should be increased to 15 days is an issue that is considered in Memorandum 86-201 which reviews comments received on the tentative recommendation relating to opening estate administration, which is also on the agenda for this meeting.

Amendment 13 also changes the 10-day period to 15 days with regard to distributions to assignees or transferees.

Amendment 25 conforms a section of the new statute governing disposition of estate without administration to the general notice provisions.

Respectfully submitted,

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Staff Counsel

**AMENDMENTS TO AB 708
CONFORMING REVISIONS AND MISCELLANEOUS AMENDMENTS**

AMENDMENT 1

In the third line of the title, after "300," insert:
327,

AMENDMENT 2

In the fifth line of the title, after "1020," insert:
1020.1,

AMENDMENT 3

In the eighth line of the title, after "6607," insert:
13153, 13501,

AMENDMENT 4

On page 5, line 12, after "100)," insert:
Chapter 22 (commencing with Section 1200) and Chapter 22.5 (commencing
with Section 1280) of Division 3,

AMENDMENT 5

On page 8, lines 7 and 8, strike out "executor or administrator"
and insert:
personal representative

AMENDMENT 6

On page 9, line 2, strike out "administrator" and insert:
representative

AMENDMENT 7

On page 9, strike out lines 14 and 15 and insert:
notice as provided in Section 1250 in the

AMENDMENT 8

On page 9, line 32, strike out "commencing" and insert:
commencing

AMENDMENT 9

On page 12, between lines 2 and 3, insert:

SEC. 24.5. Section 327 of the Probate Code is amended to read:

327. When the petition is filed, the clerk of the court shall set the same for hearing by the court upon some day not less than ~~10~~ 15 nor more than 30 days thereafter, and cause notice thereof to be published pursuant to Section 333. At the request of the petitioner which shall be made at the time the petition is filed, the clerk of the court shall set the petition for hearing by the court upon some day not less than 30 nor more than 45 days thereafter.

AMENDMENT 10

On page 12, line 5, strike out "10" and insert:

15

AMENDMENT 11

On page 12, line 12, after "petitioner" insert:

, or

AMENDMENT 12

On page 13, line 1, strike out "10" and insert:

15

AMENDMENT 13

On page 31, in line 9, strike out "Article 2", strike out line 10, and in line 11, strike out "3" and insert:

Part 6 (commencing with Section 10400) of Division 7

AMENDMENT 14

On page 32, between lines 24 and 25, insert:

SEC. 51.5. Section 1020.1 of the Probate Code is amended to read:

1020.1. The court before making distribution of any property of a

decedent to any assignee or transferee of any heir, devisee or legatee or before making distribution to any person other than an heir, devisee, or legatee pursuant to any agreement, request or instructions of any heir, devisee or legatee or of any attorney-in-fact of any heir, devisee or legatee may on the motion of any person interested in the estate or on the motion of the public administrator or on its own motion inquire into the consideration for such assignment, transfer, agreement, request or instructions and into the amount of any fees, charges, or consideration paid or agreed to be paid by the heir, devisee or legatee and into the circumstances surrounding the execution of such assignment, transfer, agreement, request or instructions and if it finds that the fees, charges or consideration paid by any such heir, devisee or legatee is grossly unreasonable or that any such assignment, transfer, agreement, request or instructions was obtained by duress, fraud or undue influence it may refuse to make distribution pursuant thereto except upon such terms as it deems just and equitable. Notice of a hearing on any motion made pursuant to this section shall be served personally or by registered mail as the court may direct at least ~~10~~ 15 days before the hearing upon the heir, devisee, or legatee executing any such assignment, transfer, agreement, request, or instructions and upon the person or persons claiming thereunder.

AMENDMENT 15

On page 36, line 26, strike out "upon" and insert:
on

AMENDMENT 16

On page 36, in line 26, strike out "at the time and in the", in line 27, strike out "manner prescribed by", and insert:
as provided in

AMENDMENT 17

On page 36, strike out line 38

AMENDMENT 18

On page 47, line 32, strike out "thereof" and insert:
of the hearing

AMENDMENT 19

On page 49, line 28, strike out "if" and insert:
is

AMENDMENT 20

On page 52, line 17, strike out "take action" and insert:
exercise a power

AMENDMENT 21

On page 52, line 19, strike out "act of a majority is valid" and
insert:
a majority must concur to exercise a power

AMENDMENT 22

On page 56, line 6, strike out "714" and insert:
9257

AMENDMENT 23

On page 56, line 36, after the period, insert:
As used in this section, "insured account in a financial institution"
has the meaning provided in Section 46.

AMENDMENT 24

On page 56, line 39, strike out "When" and insert:
Where

AMENDMENT 25

On page 57, line 34, after the comma, insert:
and be

AMENDMENT 26

On page 159, between lines 22 and 23, insert:
SEC. 93.5. Section 13153 of the Probate Code is amended to read:
13153. ~~The clerk shall set the petition for hearing. Not less~~
~~than 10 days before the hearing on the petition notice~~ Notice of the
hearing shall be personally served upon or mailed, postage prepaid,

given as provided in Section 1220 to each of the persons named in the petition pursuant to Section 13152,~~---addressed to each person at the person's residence or mailing address as set forth in the petition, or if neither of these addresses are known to any petitioner, the county seat of the county where the proceedings are pending.~~

SEC. 93.7. Section 13501 of the Probate Code is amended to read:

13501. Except as provided in Chapter 6 (commencing with Section 6600) of Division 3 6 and in Part 1 (commencing with Section 13000) of this division, the following property of the decedent is subject to administration under Division 3 (commencing with Section 300):

(a) Property passing to someone other than the surviving spouse under the decedent's will or by intestate succession.

(b) Property disposed of in trust under the decedent's will.

(c) Property in which the decedent's will limits the surviving spouse to a qualified ownership. For the purpose of this subdivision, a devise to the surviving spouse that is conditioned on the spouse surviving the decedent by a specified period of time is not a "qualified ownership" interest if the specified period of time has expired.

AMENDMENT 27

On page 161, line 1, strike out "94" and insert:
[to be supplied]