

First Supplement to Memorandum 87-36

Subject: Study L - Probate Code - Assembly Bill 708 (Transitional Provisions)

This memorandum considers the transitional provisions needed to make clear the extent to which various provisions of Assembly Bill 708 will apply to proceedings pending on the operative date of the bill (July 1, 1988).

Chapter 22. Notices (§§ 1200-1265)

The Commission has not considered the extent to which the new notice statute should apply to proceedings commenced before the operative date of Assembly Bill 708 (July 1, 1988).

The staff recommends that the new notice provisions apply to pending proceedings, except that the new provisions would not apply to the giving of a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988.

This recommendation would be effectuated by adding a new subdivision (d) to Section 1200:

1200. (a) Except as provided in subdivisions (b) and ~~(e)~~, ~~(c)~~, and (d), this chapter governs notice required or permitted under this code.

* * * *

(d) This chapter does not apply to the giving of a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. The applicable law in effect before July 1, 1988, continues to apply to the giving of that notice, notwithstanding its amendment or repeal by the act that enacted this section.

Part 4. Creditor Claims (§§ 9000-9304)

The Commission has previously considered transitional provisions in connection with creditor claims. Since the creditor claims material substantially differs from existing law and is highly procedural in character, the Commission decided that the new law should apply only to probate proceedings commenced after the operative date and not to

pending proceedings. This decision is embodied in Section 9004 of the statute (which we recommend be revised to read as follows):

9004. (a) This part applies in any proceeding for administration of a decedent's estate commenced on or after July 1, 1988.

(b) The applicable law governing the subject matter of this part in effect before July 1, 1988, continues to apply in any proceeding for administration of a decedent's estate commenced before July 1, 1988, notwithstanding its repeal by the act that enacted this part section.

Part 5. Estate Management (§§ 9600-10382)

The staff believes that it is important that the estate management provisions apply where estate proceedings were commenced prior to the operative date. Otherwise, there would be two sets of provisions governing estate management that would be applicable for a number of years and the improvements the Commission has made in the estate management provisions would not apply to pending proceedings. Accordingly, the staff recommends that the new statute not affect orders made or actions taken before the operative date (July 1, 1988) (these would continue to be governed by the law in effect prior to July 1, 1988), but the new statute would apply to any petition pending on the operative date or filed after the operative date.

To effectuate this recommendation, the staff recommends that the following provision be added to Assembly Bill 708:

Article 6. Transitional Provision

9645. (a) As used in this section:

(1) "Operative date" means July 1, 1988.

(2) "Prior law" means the applicable law in effect on June 30, 1988.

(b) Nothing in this part affects any order, judgment, or decree made, or any action taken, prior to the operative date. Notwithstanding the enactment of this part, any order, judgment, or decree made under prior law before the operative date shall continue in full force and effect in accordance with its terms or until modified or terminated by the court, and the validity of any action taken under prior law before the operative date is determined by prior law and not by this part.

(c) Subject to subdivision (b), any petition or other matter filed or commenced before the operative date shall be continued under this part, so far as applicable, except where the court determines that application of a particular

provision of this part would substantially interfere with the effective conduct of the matter or with the rights of the parties or other interested persons, in which case the particular provision of this part does not apply and prior law applies.

Part 6. Independent Administration of Estates (§§ 10400-10600)

The Commission determined that the Independent Administration of Estates provisions should apply where independent administration authority was granted on a petition filed after January 1, 1985, and, under certain circumstances, where the authority was granted by a petition filed prior to that date. See Section 10406 (pages 156-157 of Assembly Bill 708) for the provision the Commission drafted to deal with the transitional problems in connection with the new Independent Administration of Estates provisions.

Part 9. Payment of Debts (§§ 11400-11446)

The provisions on payment of debts are largely the same as existing law. However, there are a few changes that are arguably substantive in nature relating to payment of wage claims, accrual of interest on a debt ordered to be paid, and apportionment of debts between an estate and a surviving spouse. For these reasons the staff recommends that the new provisions should not apply in pending proceedings. An argument can also be made that they should not apply in any case where the decedent died before the operative date, since substantive rights may be affected. However, the substantive shifts in law are not substantial, and are outweighed in the staff's opinion by the difficulties that would result in keeping old law and trying to apply it in cases where the decedent died before the operative date but no proceeding is commenced until years later.

Thus the staff would add a provision identical to Section 9004 (creditor claims) (set out above in this Supplement):

Article 2. Preliminary Provisions

11405. (a) This part applies in any proceeding for administration of a decedent's estate commenced on or after July 1, 1988.

(b) The applicable law governing the subject matter of this part in effect before July 1, 1988, continues to apply

in any proceeding for administration of a decedent's estate commenced before July 1, 1988, notwithstanding its repeal by the act that enacted this section.

Division 11. Construction of Wills, Trusts, and Other Instruments
(§§ 21100-21541)

The marital deduction gift provisions are largely existing law. They affect construction of wills and other instruments for purposes of implementing marital deduction gifts, and are curative in nature. The changes are intended to bring state law into conformity with federal estate and gift tax law. For these reasons the provisions should be applied in pending proceedings. Section 21501(a) of the statute already does this:

This part applies to a distribution made on or after January 1, 1983, whether the transferor died before, on, or after that date. However, this part does not apply to an instrument the terms of which expressly or by necessary implication make this part inapplicable.

One problem with this provision, however, is that it seems to require reopening estates settled between January 1, 1983, and the operative date of the new law, if necessary to apply any new rules of construction created in the new law. Clearly we do not want to do this, so we would change the date of this provision to January 1, 1988. We would do this even though the remainder of AB 708 becomes operative on July 1, 1988, since this is a curative statute that requires no procedural implementation.

Conforming Changes

A consequence of combining several recommendations in one bill, each of which has a somewhat different operative date, is that the operative dates of conforming changes that go along with the various recommendations must somehow be coordinated with the operative dates of those recommendations. This could be done either by an uncodified listing at the end of AB 708 of what operative date applies to what section, or a codified operative date provision included for each conforming change. Codification of an operative date provision in each conforming change is unduly cumbersome, and will clutter the law for years to come. The staff will prepare an uncodified listing of operative dates, which the code publishers can pick up in their

annotations. We plan to review each conforming change in light of the Commission's decisions concerning the provisions recommended above. If necessary, we will draft an amendment to deal with any problems we discover that are not adequately covered by Section 95 of Assembly Bill 708.

Respectfully submitted,

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