

Memorandum 87-46

Subject: Study L-1030 - Amendments to Assembly Bill 708 (Amendment
to Probate Code Section 13152)

Gregory Wilcox, an Oakland lawyer, has discovered a technical problem in the provisions that permit the court to make an order determining succession to real property. This procedure, which is provided by Probate Code Sections 13150-13157, is available only where the gross value of the decedent's real and personal property in California, as shown by the inventory and appraisal attached to the petition, does not exceed \$60,000. The procedure is drawn from the spousal property petition procedure (the "650" procedure), but that procedure does not require any inventory or appraisal of the estate.

The statute is designed to provide a streamlined procedure for obtaining the court order determining succession to real property. An inventory and appraisal must be attached to the petition showing that the decedent's property in this state does not exceed \$60,000. The Commission included this requirement so that the petition would have an inventory and appraisal showing that the case was one that qualified for a court order determining succession to real property. The inventory and appraisal must be made by a probate referee, except that the petitioner may appraise assets that the personal representative could appraise if the inventory and appraisal were prepared for use in an ordinary probate.

The problem is that most (if not all) courts will not appoint a probate referee until after a petition has been filed. But the statute requires that the inventory and appraisal be attached to the petition when filed.

Section 13103 (which deals with the affidavit procedure for real property of less than \$10,000) makes clear that the affiant (and not the court) selects the probate referee. That section provides in part: "The inventory and appraisal shall be made by a probate referee selected by the affiant or declarant from those probate referees appointed by the Controller under Section 1305 to appraise property in

the county where the real property is located." The problem identified by Mr. Wilcox arises from the failure to include a similar provision in the procedure for the court order determining succession to real property.

Mr. Wilcox plans to select a probate referee to make the inventory and appraisement that must be attached to the petition under the provisions relating to a court order determining succession to real property. The probate referee will first determine the value of the real property. If the value does not exceed \$10,000, the affidavit procedure for real property of small value may be used. If the value of the real property exceeds \$10,000, then the appraiser must also appraise the personal property in this state, and the inventory and appraisement prepared by the probate referee showing that the gross value of the real and personal property does not exceed \$60,000 will be attached to the petition.

The staff recommends that language be added to Section 13152 (contents of petition for court order determining succession to real property) to make clear that the petitioner may select the probate referee from those appointed by the Controller. This solution will avoid the need for the probate courts to set up a procedure for appointing the probate referee before the petition is filed. A copy of Section 13152 as proposed to be amended is attached to this Memorandum.

We recommend that this amendment be included in Assembly Bill 708. This amendment could be made operative on January 1, 1988. Although the clarification will not go into effect until then, the staff suspects that attorneys during the time before then will take the same approach as Mr. Wilcox and will select the probate referee so that they can satisfy the statutory requirement that the inventory and appraisement be attached to the petition when filed.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

05/27/87

SEC. ____ . Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the particular item of property described in the petition is property passing to the petitioner and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in California, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed sixty thousand dollars (\$60,000).

(3) A description of the particular item of property in this state which the petitioner alleges is property of the decedent passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described real property is property passing to the petitioner.

(5) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in

Section 600 of the decedent's real and personal property in this state, excluding the property described in Section

13050. The inventory and appraisement shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 1305 to appraise property in the county where the real property is located. The appraisement shall be made as set forth in

Chapter 9 (commencing with Section 600) of Division 3. The petitioner may appraise the assets which a personal representative could appraise under paragraph (1) of subdivision (a) of Section 605.

(c) If the petitioner bases his or her claim to the described particular item of property upon the will of the decedent, a copy of the will shall be attached to the petition.

~~This section shall only become operative if Assembly Bill No. 2652 of the 1985-86 Regular Session is enacted and adds a Section 15804 to this code, in which case this section shall become operative on July 1, 1987.~~

Comment Section 13152 is amended to recognize that the petitioner (rather than the court) selects the probate referee. This is because the inventory and appraisement must be attached to the petition when filed, but the court does not designate a probate referee until after a petition is filed. The new sentence added to Section 13152 is the same as the last sentence of Section 13103 (affidavit procedure for real property of less than \$10,000).