

#L-1029

ns29b
10/02/87

Memorandum 87-86

Subject: Study L-1029 -Distribution and Discharge (Approval of
Recommendation for Printing)

Attached to this memorandum is a draft of the recommendation relating to distribution and discharge, with revisions made at the September meeting in Los Angeles. We hope all interested persons will review the draft carefully once more, since we would like to approve the recommendation now for printing and submission to the Legislature.

Respectfully submitted,

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Assistant Executive Secretary

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.

Supplemental account. Even though there is a final order for distribution made on the personal representative's final account, existing law provides for a supplemental 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 under the court order for final distribution. This includes responsibility for proper disposition of income accruing during the distribution period. The court may supplement this procedure with instructions or by requiring a supplemental account in an appropriate case. Where the court order fails to deal with after-acquired or after-discovered property, the

1. Prob. Code § 1002.

2. Prob. Code § 1020.5.

personal 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 unnecessary; the proposed law allows the personal representative to deposit whenever there is unclaimed property or the

3. Prob. Code §§ 1080-1082.

4. Prob. Code § 1022.

5. Prob. Code §§ 13000 et seq.

6. Prob. Code § 1062.

whereabouts of a beneficiary are unknown. If the distributee appears to claim the proceeds deposited with the court, existing law requires a court order on 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.⁹ In the case of real property, a statement of the recording information for the court order for distribution or the personal representative's deed serves as a sufficient receipt.

Discharge procedure. The actual discharge of the personal representative after all estate property has been distributed under 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 court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt and that the property has been delivered to or is in the possession of the distributee.

10. Prob. Code § 1066.

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Staff Draft

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

§ 11600. Petition for distribution

11600. The personal representative or a beneficiary or other interested person may petition the court under 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 are unknown. A copy of the latest account filed with the court shall be served on the State Controller with the notice.

Comment. Paragraphs (1) to (3) of Section 11601(b) 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).

Paragraph (b)(4) 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

§ 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

§ 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 under 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 under 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 on 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 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 order for distribution shall be stayed until any bond required by the court is filed.

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

CROSS-REFERENCES

Definitions

Interested person § 48

§ 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 orders.

(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

§ 11623. Distribution under Independent Administration of Estates Act

11623. Notwithstanding any other provision of this chapter, if authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400):

(a) The personal representative may petition the court for an order for preliminary distribution on notice as provided in Section 1220. Notwithstanding subdivision (f) of Section 1220, the court may not dispense with notice unless the time for filing creditor claims has expired.

(b) 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) as well as prescribe an ex parte hearing in an appropriate case (Section 1220(f)). Subdivision (b) makes clear that the total of all distributions under this section may not exceed 50% of the net value of the estate. The provision of former law relating to dispensing with an account is omitted; an account is not statutorily required for an order of preliminary distribution as it is for an order for final distribution. See Section 10951 (final account). However, the court may not make an order under this section unless it is satisfied from the information presented to it that distribution may be made without loss to creditors or injury to the estate or any interested person. Section 11621 (order for distribution).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 11624. Costs of proceeding

11624. The costs of a proceeding under this article shall be paid by the distributee or the estate in proportions determined by the court.

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.

Article 3. Final Distribution

§ 11640. Petition and order

11640. (a) When debts have been paid or adequately provided for 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).

(c) If debts remain unpaid or not adequately provided for 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).

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.

Subdivision (c) restates a portion of former Section 956, with the addition of a reference to the provisions governing the time for closing the estate. See Section 12201 (report of status of administration).

§ 11641. Distribution under court order

11641. When an order settling a final account and for final distribution becomes final, the personal representative may immediately distribute the property in the estate to the persons entitled to distribution, without further notice or proceedings.

Comment. Section 11641 supersedes the last portion of the second sentence of former Section 926.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Property § 62

§ 11642. After-acquired or after-discovered property

11642. 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, distribution shall be made in the manner provided in the order. The court may, in a appropriate case, require a supplemental account and make further instructions relating to the property.

(b) If the order does not dispose of the property, distribution shall be made either (1) in the manner ordered by the court on a petition for instructions or (2) under Section 12252 (administration after discharge), if the personal representative has been discharged.

Comment. Section 11642 supersedes former Section 1020.5 (supplementary account).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

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, 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). 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

§ 11701. Notice of hearing

11701. (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.

Comment. Subdivision (a) of Section 11701 continues the second sentence of former Section 1080 without substantive change. Subdivision (b) supersedes the third sentence of former Section 1080. See also Sections 1206 (notice to known heirs or devisees) and 1252 (notice to be given to person requesting special notice).

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

§ 11702. Responsive pleading

11702. (a) 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. The written statement may be in support of or in opposition to the petition. No other pleadings are necessary and the written statement of each claimant shall be deemed denied by each of the other claimants to the extent the written statements conflict.

(b) If a person fails timely to file a written statement:

(1) The case is at issue notwithstanding the failure, and no entry of default is necessary. The case may proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the proceeding for determination of persons entitled to distribution, but the person's interest in the proceeding or the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

Comment. Subdivision (a) of Section 11702 restates the fifth and sixth sentences of former Section 1080 without substantive change, with the clarification that the written statement may be in support of or in opposition to the petition. Subdivision (b) is new and is comparable to Section 8251(c) (will contest).

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

§ 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.

Comment. Section 11703 restates the last sentence of former Section 1080 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Devise § 32
Person § 56
Trust § 82
Trustee § 84

§ 11704. Hearing

11704. (a) The court shall consider all evidence 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

§ 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 binds and is conclusive as to the rights of all interested persons.

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.

CHAPTER 3. DISTRIBUTION OF PROPERTY IN ESTATE

§ 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.

(c) A distribution of property made in compliance with the terms of the court order for distribution is valid as to a good faith purchaser of the property for value.

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 11642. Subdivision (b) restates a portion of former Section 1021. Subdivision (c) is new.

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Property § 62

§ 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. 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. See also Section 1222 (recordation of order affecting title to real property).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Real property § 68

§ 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. On 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

§ 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 date and place or location of the recording and other appropriate recording information for the court order for distribution or the personal representative's deed.

(c) The court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt and that the property has been delivered to or is in the possession of the distributee.

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).

Subdivisions (b) and (c) are 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

CHAPTER 4. DECEASED DISTRIBUTE

§ 11800. "Deceased distributee" defined

11800. As used in this chapter, "deceased distributee" means a beneficiary who survives the decedent or, if the will requires survival of the decedent for a stated period, survives the decedent for the period stated, but who 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, with the addition of a reference to a beneficiary who survives a period stated in the decedent's will. Section 11800 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 under this chapter 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 may not be made under this chapter if the decedent's will provides that a person is entitled to take under the will only if the person survives the date of distribution.

Comment. Section 11801 restates the second paragraph of former Section 1023, omitting the reference to an improper distribution being void. A distribution made under court order is valid as to bona fide purchasers for value. See Section 11750 (responsibility for distribution). A provision in a will requiring survival to the date of distribution is satisfied by survival to the date distribution could and should have occurred. Estate of Taylor, 66 Cal. 2d 855, 428 P.2d 301, 59 Cal. Rptr. 437 (1967).

CROSS-REFERENCES

Definitions

Person § 56

Will § 88

§ 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 under Division 8 (commencing with Section 13000) (disposition of estate without administration), distribution shall be made under 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 or the whereabouts of the distributee are unknown.

(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 Section 11851, deposit may not be made under this subdivision except on 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

§ 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 on 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

§ 11852. Receipt by county treasurer

11852. The county treasurer shall give a receipt for a deposit made under this chapter and is liable on the official bond of the county treasurer for the money deposited. The receipt has the same 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 money 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. On 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) If so ordered by the court, 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. On 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 with notice to the Attorney General as the court determines, and substitutes a court order for the certificate of right.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Verification required § 1284

CHAPTER 6. DISTRIBUTION TO STATE

§ 11900. Distribution to State of California

11900. (a) The court shall order property that is not ordered distributed to known beneficiaries to be distributed to the state.

(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, 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 under 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, 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 under this section, the personal representative shall deliver to the State Controller a certified copy of the order for distribution together with a statement of the date and place or location of each recording and other appropriate recording information.

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

§ 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 under this chapter, but the property that would otherwise be deposited in the county treasury shall be transmitted promptly 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. In the case of deposit of distribution of property to the state, money is delivered to the State Treasurer and personal property is delivered to the State Controller. See Section 11902 (disposition of property distributed to state).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

§ 11950. Right to partition or allotment

11950. (a) 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.

(b) A proceeding under this chapter is limited to interests in the property that are subject to administration and does not include other interests except to the extent the owners of other interests in the property consent to be bound by the partition, allotment, or other division.

Comment. Section 11950 restates former Section 1100, making clear that the partition may affect only interests in the property that are subject to administration. 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 under the general provisions for distribution.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Property § 62

§ 11951. Petition

11951. (a) A petition under 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) State the names of the persons having or claiming undivided interests.

(3) Describe the undivided interests, 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 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.

Comment. Section 11952 supersedes former Section 1102 and the third, fourth, and fifth sentences of former Section 1101.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Person § 56

Personal representative § 58

§ 11953. Disposition of property

11953. (a) The court 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

§ 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 partition actions, and the court shall have the same powers with respect to their report as in partition 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 shall be included and specified in the order and, to the extent unpaid, constitutes a lien on the property allotted to the party.

Comment. Section 11955 restates former Section 1105, with the addition of the requirement that expenses be specified in the order before they may become a lien on the property. Section 11955 is an exception to the general rules stated in Section 11624 (costs of proceeding).

CROSS-REFERENCES

Definitions

Property § 62

§ 11956. Effect of division

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

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

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

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 not required, within one year after the date of issuance of letters.

(b) In an estate for which a federal estate tax return is 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

§ 12201. Report of status of administration

12201. If a report of status of administration is made under 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) On 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 on 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, on petition of any interested person or on 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) On 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.

(c) Nothing in this section limits the power of the court to order a preliminary distribution of the estate.

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). Subdivision (c) is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Interested person § 48

§ 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, on the hearing for final distribution or for an allowance on the commissions of the personal representative or on 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 under 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 or the court has excused the filing of a receipt, the court shall, on ex parte petition, 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 under court order, and all the acts lawfully required of the personal representative have been performed. As to after-discovered property, see Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Personal representative § 58
Verification required § 1284

§ 12251. Discharge without administration

12251. (a) At any time after appointment of a personal representative and whether or not letters have been issued, if it appears there is no property of any kind belonging to the estate and subject to administration, the personal representative may petition for the termination of further proceedings and for discharge of the personal representative. The petition shall state the facts required by this subdivision.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all interested persons.

(c) If it appears to the satisfaction of the court on 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, with the addition of subdivision (b). 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

Interested person § 48
Letters § 52
Personal representative § 58
Property § 62
Petitions, reports, and accounts § 1020
Verification required § 1284

§ 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 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) Notice of hearing of the appointment shall be given as provided in Section 1220 to interested persons. 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 given as provided in Section 1220 to the State Controller.

Comment. Section 12252 restates former Section 1067, conforming the notice provisions to Section 1220. As to after-discovered property, see Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

COMMENTS TO REPEALED SECTIONS

CHAPTER 15. COMPENSATION AND ACCOUNTING

Article 4. Payment of Debts, Expenses, and Charges

Probate Code § 956 (repealed)

Comment. The first clause of former Section 956 is restated in Section 11640 (petition and order for final distribution) without substantive change. The last clause is superseded by Section 12201 (report of status of administration).

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 11642 (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 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. Former Section 1055 is restated without substantive change as an uncodified provision.

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 superseded by 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).