

## First Supplement to Memorandum 87-97

Subject: Study L-2008 - Cleanup Bill (Liability of Successor under Affidavit Procedure)

At the October meeting, the Commission requested the staff to develop amendments to the affidavit procedure (Probate Code §§ 13000-13208) to ensure that a person who takes property by affidavit is not liable to a creditor whose claim is barred in later probate proceedings. Under existing law, the person taking property by affidavit may avoid liability by restoring property to the estate, but if the taker does not make restitution, there is no reason to permit a creditor who has failed to make a claim in the estate or is otherwise barred to enforce its claim against the taker.

The staff proposes the following amendments to deal with this problem:

Probate Code § 13109 (amended). Liability of person taking personal property by affidavit for decedent's unsecured debts

13109. A person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable, to the extent provided in Section 13112, for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

Comment. Section 13109 is revised to make clear that the liability of a person who takes personal property by affidavit is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13156 (amended). Liability of person taking real property by court order for decedent's unsecured debts

13156. (a) Subject to subdivisions (b) and (c), the petitioner who receives the decedent's property pursuant to an order under this

chapter is personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) In any action based upon an unsecured debt of the decedent, the petitioner may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

Comment. Subdivision (d) is added to Section 13156 to make clear that the liability of a person who takes real property by court order under this chapter is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13204 (amended). Liability of person taking real property by affidavit for decedent's unsecured debts

13204. Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

Comment. Section 13204 is revised to make clear that the liability of a person who takes real property by affidavit is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Respectfully submitted,

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