

Fourth Supplement to Memorandum 87-97

Subject: Study L-2008 - Additional Material Relating to Cleanup Bill

This supplement presents additional material relating to the cleanup bill for AB 708. Three letters from Study Team 1 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section relating to material distributed earlier are attached as exhibits.

Exhibit 1 relates to Memorandum 87-89 (Priority of Federal and State Debts). The team disagrees with the staff proposal to limit "debt" to debts incurred by the decedent during life, for purposes of federal and state priority statutes. They suggest, instead, that the phrase "the debts of the decedent, the expenses of administration and the charges against the estate" be used. This is an acceptable approach, although it necessitates use of a fairly lengthy and cumbersome phrase in numerous places in the statute where a simpler term would do.

Exhibit 2 relates to the First Supplement to Memorandum 87-97 (Liability of Successor under Affidavit Procedure). Team 1 approves of the proposed provisions. Team 1 also suggests that Section 13156(a) be revised to refer to the new subdivision (d). The staff agrees with this suggestion. Section 13156 would read as follows:

13156. (a) Subject to subdivisions (b), (c), and (e) (d), 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.

Exhibit 3 relates to the Second Supplement to Memorandum 87-97 (Fiduciary Duties of Agents). Team 1 approves of the proposed provisions. Team 1 also notes a redundancy in Civil Code Section 2322. As corrected, this section reads:

2322. An authority expressed in general terms, however broad, does not authorize an agent to do any of the following:

(a) Act in the agent's own name, unless it is the usual course of business to do so.

(b) Define the scope of the agency.

(c) Violate a duty to which a trustee is subject ~~pursuant to Chapter 1 (commencing with Section 16000) of Part 4 of Division 9~~ under Section 16002, 16004, 16005, or 16009 of the Probate Code.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

Stan G. Ulrich
Staff Counsel

R E P O R T

TO: JAMES V. QUILLINAN
LLOYD W. HOMER
D. KEITH BILTER
CHARLES A. COLLIER, JR.
JAMES D. DEVINE
IRWIN D. GOLDRING
JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: NOVEMBER 13, 1987

SUBJECT: ~~SECOND SUPPLEMENT TO~~ LRC MEMORANDUM 87-97 -
(Cleanup Bill for AB 708 -- martial deduction
gifts/priority of federal and state claims)

Study Team No. 1 held a telephone conference on November 12, 1987. Charles A. Collier, Richard S. Kinyon and Lynn P. Hart and William V. Schmidt participated. The other two members, Sterling L. Ross, Jr. and Michael V. Vollmer did not participate.

We have the following comments:

Government Code §§ 26827, 26827.4, and 26827.5: The Probate Administration Committee of the Executive Committee is currently making a study on these sections which hopefully will be completed by the end of the calendar year or shortly thereafter. At this time we can only speculate as to what recommendations will be made by that Committee. For the time being therefore, we have no further comments or recommendations and these sections are satisfactory.

Probate Code § 1143: Satisfactory.

Section 9052: Satisfactory. We feel that the revision is definitely preferable.

Section 11401: In view of the fact that Section 11401 and 11420 not take effect until July 1, 1988, we feel it would be appropriate to change their language if such change would help to clarify possible confusion. We therefore feel that in lieu of adding a new subsection (b) to clarify any confusion that might result from definition of the word "debt", we feel that we should basically return to the language of old Probate Code § 950.

We do not feel it is necessary for a new Section 11401 to be created to define debt in a manner which includes expenses of administration, expenses of last illness and family allowance. The introductory language of old Section 950 seems to us to be preferable and could be adopted to the beginning of new Section 11420 eliminating Section 11401 and the confusion which seems to have resulted from its recent enactment.

Section 21150: The change is satisfactory.


Section 21521: The proposed changes are satisfactory.

We have no further comments.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain

R E P O R T

TO: JAMES V. QUILLINAN
LLOYD W. HOMER
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THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: NOVEMBER 13, 1987

SUBJECT: FIRST SUPPLEMENT TO LRC MEMORANDUM 87-97 -
(Cleanup Bill on AB 708 - Liability of Successor
under Affidavit Procedure)

This memorandum was received by Study Team No. 1 after its conference call on Thursday, November 12, 1987. It has therefore, at this time, only been reviewed by William V. Schmidt who makes this report on behalf of Study Team No. 1. This memorandum may well be reviewed and discussed at the Executive Committee meeting of the section in Los Angeles on November 14. Further input may well come from that meeting.

Study Team No. 1 believes that the proposed changes to Probate Code §§ 13109, 13156, and 13204 are beneficial in concept and satisfactory in form. We do, however, have one minor suggestion. Since new subdivision (d) is being added to Section 13156, we feel the language of this section would

be clearer and stronger if subsection (a) began with the words "Subject to subdivisions (b), (c) and (d),..."

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain

R E P O R T

TO: JAMES V. QUILLINAN
LLOYD W. HOMER
D. KEITH BILTER
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JAMES C. OPEL
THE EXECUTIVE COMMITTEE IN GENERAL

FROM: WILLIAM V. SCHMIDT, STUDY TEAM NO. 1

DATE: NOVEMBER 13, 1987

SUBJECT: SECOND SUPPLEMENT TO LRC MEMORANDUM 87-97 -
(Cleanup Bill Fiduciary Duties of Agents)

Study Team No. 1 held a telephone conference on November 12, 1987. Charles A. Collier, Richard S. Kinyon and Lynn P. Hart and William V. Schmidt participated. The other two members, Sterling L. Ross, Jr. and Michael V. Vollmer did not participate.

We have the following comments:

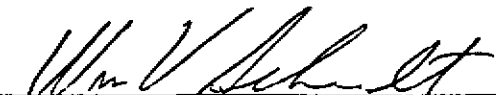
Civil Code Section 2322: We believe that there is a grammatical mistake in subsection (c). The words "pursuant to under" should either be "pursuant to" or "under." Otherwise we feel that the recommended change is satisfactory.

We have no further comments.

Respectfully submitted,

STUDY TEAM NO. 1

By:


WILLIAM V. SCHMIDT,
Captain