rm29
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Third Supplement to Memorandum 89-17

Subject: Study L-654 - In-Law Inheritance (additional letters)

If the Commission decides to retain the in-law inheritance statute in any form, the Commission may wish to deal with some of the problems that exist under the language of the statute. There are law review articles identifying some of the problems, and we have received letters identifying others.

Attached are letters from attorney Jon Kasimov of Santa Monica (Exhibit 1) and attorney David Flinn of San Francisco (Exhibit 2) concerning the in-law inheritance statute (Section 6402.5). Mr. Kasimov's letter concerns whether the 1986 amendments to Section 6402.5 (SB 1218 sponsored by heir-tracers, adding specified personal property interests to the section) are retroactive. Mr. Flinn's letter concerns an ambiguity in subdivision (f) of the section. The Executive Secretary within the last week received a telephone call concerning the same ambiguity.

Attached as Exhibit 3 is a letter from a private citizen complaining that the intestate succession law is unduly complex and difficult to understand.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

HAIGHT, BROWN & BONESTEEL
LAWYERS
201 SANTA MONICA BOULEVARD
P.O. BOX 680
SANTA MONICA, CALIFORNIA 90406
(213) 458-1000

TELECOPIER
(213) 393-1581
TELEX
705837

5 HUTTON CENTRE DRIVE, SUITE 900
SANTA ANA, CA 92707
(714) 754-1100

IN REPLY REFER TO:

June 23, 1988

Jon M. Kasimov
Santa Monica
35742

John H. DeMoully, Esq.
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94306

CA LAW REV COMM'N
JUN 27 1988
RECEIVED

Re: Probate Code Sections 6402.5 and 6414

Dear Mr. DeMoully:

This office represents the heirs of a decedent who died in 1985 leaving an estate valued at several million dollars. Our clients are involved in litigation with the heirs of the predeceased spouse who died in 1984.

Counsel for the heirs of the predeceased spouse is taking the position that Probate Code Section 6402.5 as amended by Senate Bill 1218 is made retroactive to January 1, 1985 by Probate Code Section 6414. I understand that you are the drafter or one of the drafters of Section 6414. I would be very appreciative if you would call me collect at your earliest convenience to discuss whether the drafters of Section 6414 or the Legislature intended for Section 6414 to be used as a vehicle for making amendments to Section 6402.5 retroactive. Alternatively, I would appreciate it if you would send me a letter discussing your opinions concerning this retroactivity issue. I spoke with Stan Ulrich of your office on June 21, 1988. He suggested that I write to you.

Thank you for your anticipated courtesy and cooperation in this matter.

Very truly yours,

Jon M. Kasimov
of Haight, Brown & Bonesteel

JMK:L

LAW OFFICES OF
LELAND, PARACHINI, STEINBERG,
FLINN, MATZGER & MELNICK
333 MARKET STREET-27TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-2171
TELEPHONE: (415) 957-1800
TELEX: 278941
TELECOPIER: (415) 974-1520

DAVID B. FLINN

September 6, 1988

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Gentlemen:

With reference to the ongoing recommendations regarding Probate Code changes, I would like to urge you to review for change Section 6402.5(f) of the Probate Code. This is the section which describes that property which is to be passed to the heirs of a predeceased spouse in an intestate situation.

The section contains a serious ambiguity. In listing the properties which are "attributable" to the predeceased spouse, item (1) and item (2) refer to the same property. This was the result of a drafting error in committee with which I had some familiarity. The section as originally drafted did not contain item (2). Item (1), when not restricted by the term "which was given to the decedent by the predeceased spouse by way of gift, descent or devise," was being misconstrued by numerous counsel so as to allow all sorts of claims that were never intended. The obvious purport of the section, and the obvious purport of the old Sections 227 and 228 from which this approach derives, was to "bring back" certain property to the predeceased spouse side of the family. However, if the surviving spouse side had acquired that property for value, the predeceased spouse heirs presumably already received "their share," and to again direct property to the predeceased spouse side would result in a disproportionate distribution. The committee agreed to make the change which I suggested (addition of the words "which was given to the decedent by the predeceased spouse by way of gift, descent or devise"), but inadvertently, instead of simply adding the phrase at the end of item (1), created a new item (2).

As a result, there is even more confusion now than in the past. In an estate where the first spouse to die leaves his or her share of the community property to someone other than the surviving spouse, upon the death of the surviving spouse claims are being made by the predeceased spouse family to the surviving spouse half. Obviously, this is not what is intended by the section, for the result of such a claim would be that 3/4 of the property would pass to the predeceased spouse side and 1/4 to the surviving spouse

side. The solution is simply to delete item (1) from Section 6402.5(f) and renumber the remainder of the paragraph.

I would be happy to provide any further information deemed appropriate.

Sincerely,

David B. Flinn

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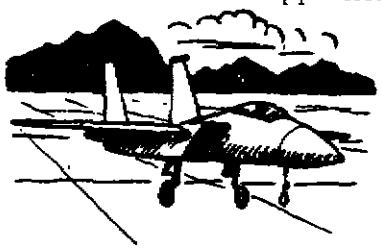

BILLETING
Luke AFB, Az. 85309
"BEST IN THE WEST"

Legal Department
California Assembly
Sacramento, California

December 4, 198y

This is regarding estates when there is no will. There seems to be no simple chart showing how the relatives would share in the statutes. I examined them carefully and they certainly differ in that there are so many references and no clear cut explanation of which relatives would share in the estate if they were not parents, children, or sisters or brothers.

In this case the person deceased left no will that could be located and this seemed very strange as she was a business woman living alone since the death of her mother. She had four neices and nephews from an adopted mother who is deceased. She also had some first cousins (blood relationship).

All were from out of state except one and all were notified of the hearings by the attorney. Why would these cousins be notified and some travelled considerable distances to appear for the hearings only to learn there were postponements or papers had been mislaid or lost. Why wouldn't the attorney simply notify these cousins that they would not enherit anything if that is the way the law is? If they had been notified regarding there not being those sharing in the estate they certainly would not have traveled those distances to appear.

I have studied the laws regarding estates in a number of other states and none are so complicated as those of California. Most have a simple chart showing the different relationships and how they would share if there were no will.

Yours truly,
Frances S. Brunner
Frances S. Brunner
H.C. 64, Box 195
Rimrock, Arizona 86335

I formerly was a resident of California and had thought of returning there to live. However, it is disturbing that members of the Assembly would have the laws so complicated regarding estates that it is difficult to understand them.