

Memorandum 89-33

Subject: Study L-1030 - Summary Collection in Small Estates (Cameron letter)

Exhibit 1 is a letter from attorney Daniel Cameron to Jim Willett concerning Probate Code Sections 13150-13157. Mr. Cameron makes three points, discussed in order.

Wording of Court's Order

Sections 13150-13157 permit decedent's successors to get insurable title to decedent's real property by a summary court procedure if the gross value of decedent's property in California does not exceed \$60,000. Under Section 13154, the court's order determines that real property described in the order "is property passing to the petitioners and the specific property interest of each petitioner in the described property." Under Section 13155, the order "is conclusive on all persons, whether or not they are in being." But the order cannot bind claimants who did not have notice of the proceedings. Notice is given only to decedent's heirs and devisees, persons named as executors, and trust beneficiaries. Prob. Code §§ 13152, 13153. So the order in the summary proceeding only binds those persons. See *Jurisdiction, Notice, and Procedure*, in 1 California Decedent Estate Practice § 6.12 (Cal. Cont. Ed. Bar 1989).

Mr. Cameron recommends adding language to authorize the court to "set aside" the property to those entitled to it. By phone, Mr. Cameron acknowledged that this is a change of taste: His language would not give the order any broader effect than it has under existing law. He cited the community property set-aside provision (Prob. Code § 13656) as a model for improving this language. However, that provision uses the same language as the summary collection procedure for real property in a small estate: Under Section 13656, the court makes an order "determining that the property is property passing to the surviving spouse." Since Mr. Cameron's suggestion would be a change of taste, not substance, and since the wording of Section 13154 is now similar to the community property set-aside provision, the staff recommends against changing the language of Section 13154.

Including Personal Property in Court Proceeding for Real Property

If the gross value of decedent's property in California does not exceed \$60,000, personal property may be collected by affidavit (Section 13101), while transfer of real property requires a petition and court order (Sections 13151, 13154). If the estate has both real and personal property, Mr. Cameron thinks it would be "simpler" to allow the court in the real property proceeding also to order disposition of personal property, making the affidavit procedure unnecessary. This could be accomplished by the draft in Exhibit 2.

When the Commission developed the court procedure for real property, personal property was intentionally excluded because of concern that the holder of decedent's personal property, when presented with an affidavit under Sections 13100-13116, might seize on the availability of a court remedy to insist on a court order before releasing the personal property. The staff has included in Exhibit 2 a section to deal with this problem (Section 13158).

If the court procedure for real property is expanded to include personal property as proposed in Exhibit 2, it may be asked why it should not apply to personal property whether or not there is real property in the estate. Although such a scheme would be more symmetrical, it seems unnecessary because the affidavit procedure is so simple and expeditious. Accordingly, the draft in Exhibit 2 does not go so far. Rather it limits inclusion of personal property in the court proceeding to the case where there is real property in the estate.

Judicial Council Forms

Mr. Cameron's last point concerns Judicial Council forms. The staff sent a copy of Mr. Cameron's letter to the Judicial Council, and discussed it with Ben McClinton of the Judicial Council staff. Mr. McClinton thinks Mr. Cameron's point has merit. He will keep the letter until the form is next revised.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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Dear Jim,

. We have recently completed a Petition under Section 13150 et seq. of the Probate Code Determining Succession to a parcel of real property where the entire estate is under \$60,000.00. I am writing to you as I believe you are on the Code Revision Commission or at least you are consulted by the Commission on Probate matters.

First, possibly the Order under this section should be more than just an "Order Determining Succession to Real Property". It would appear that it would be better to have the interest in the real property set aside to the parties who are involved after it is determined that they are entitled to succeed to it.

Second, if the entire estate which might require a probate proceeding does not exceed \$60,000.00 and consists of real and personal property that the Petition should permit the setting aside the entire estate to the heirs at law or the persons who are entitled to the real and personal property under the Will of the decedent. We had this situation recently where there was approximately \$7,000.00 in cash and a parcel of real property worth \$45,000.00. We had to go both ways. The personal property was transferred under Section 13100 et seq. and real property under Section 13150 et seq. It would have been simpler to have it all part of the one proceeding.

The last item relates to the forms being used and approved by the Judicial Council. We believe that the Order should be more definite as to naming the Petitioners and naming their interest. The only reference to Petitioners is in the next to last paragraph under 9b which states, "The specific property interest of each Petitioner in this property". It would appear to be more appropriate to state in the beginning of the Order the names of the Petitioners and then indicate in the Order portion the names of the Petitioners and their interest in the real property to which they will succeed.

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These are some thoughts I had regarding Section 13150
et seq. of the Probate Code.

With best regards, we remain

Very truly yours,

CAMERON & DOPKINS

A handwritten signature in cursive script, appearing to read "Dan Cameron", written in dark ink.

Daniel M. Cameron

DMC:sb

Exhibit 2

Probate Code § 13152.5 (added). Petition for order concerning personal property

SEC. _____. Section 13152.5 is added to the Probate Code, to read:

13152.5. (a) A petition under Section 13152 may include a request that the court make an order under this chapter determining that a particular item of personal property described in the petition is property passing to the petitioner, and shall state all of the following:

(1) A description of the particular item of personal property which the petitioner alleges is property of the decedent passing to the petitioner.

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

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

Comment. Section 13152.5 is new. The section is added as a convenience to allow a petition under this chapter to include a request that the court determine that decedent's personal property is property passing to the petitioner.

Probate Code § 13154 (amended). Court order

SEC. _____. Section 13154 of the Probate Code is amended to read:

13154. (a) If the court makes the determinations required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) that no administration of the decedent's estate is necessary , and, if the petition so requests under Section 13152.5, (3) that personal property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property .

(b) The court may make an order under this section only if the court makes all of the following determinations:

(1) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13150, does

not exceed sixty thousand dollars (\$60,000).

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) No proceeding is being or has been conducted in this state for administration of the decedent's estate.

(4) The ~~real~~ property described in the order is property of the decedent passing to the petitioner.

(c) If the petition has attached an inventory and appraisement that satisfies the requirements of subdivision (b) of Section 13152, the determination required by paragraph (1) of subdivision (b) of this section shall be made on the basis of the verified petition and the attached inventory and appraisement, unless evidence is offered by a person opposing the petition that the gross value of the decedent's real and personal property in this state, excluding the property described in Section 13150, exceeds sixty thousand dollars (\$60,000).

Comment. Section 13154 is amended to authorize the court in a proceeding under this chapter to include in its order a determination that decedent's personal property is property passing to petitioners.

Probate Code § 13155 (amended). Conclusiveness of order

SEC. _____. Section 13155 of the Probate Code is amended to read:

13155. Upon becoming final, an order under this chapter determining that ~~real~~ property is property passing to the petitioner is conclusive on all persons, whether or not they are in being.

Comment. Section 13155 is amended to reflect the expansion of the court's authority to include personal property in its order. See Section 13154.

Probate Code § 13158 (added). No effect on affidavit procedure for personal property

SEC. _____. Section 13158 is added to the Probate Code, to read:

13158. Nothing in this chapter excuses compliance with Chapter 3 (commencing with Section 13100) by the holder of the decedent's personal property if personal property is sought to be collected by affidavit as authorized in that chapter.

Comment. Section 13158 is added to ensure that the holder of decedent's personal property will not insist that the person seeking to collect the property by affidavit or declaration instead use the court procedure in this chapter. See Sections 13152.5, 13154. For the penalty for refusing to transfer decedent's personal property to the person executing the affidavit or declaration, see Section 13105.

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