

Memorandum 90-82

Subject: Study L-3015 - Debts that are Contingent, Disputed, or Not Due
(Comments on Tentative Recommendation)

Attached to this memorandum is a copy of the Commission's the tentative recommendation for procedures to facilitate distribution and closing of an estate while providing for unpaid debts against the estate that are contingent, disputed, or not due. The tentative recommendation was distributed for comment in May.

Under this recommendation the court may order the estate distributed after making appropriate arrangements for the debt, such as payment into a blocked account in a financial institution subject to court order, payment to a trustee, or requirement of a bond or other security or an assumption of liability by the distributee.

There was unanimous enthusiasm for this recommendation from our commentators. Expressions of support without further comment were received from the following persons, whose letters are not reproduced here:

Margaret R. Roisman of Oakland
Linda Silveria of San Jose
Patricia H. Jenkins of Los Angeles County Counsel
Henry Angerbauer of Concord
Howard Serbin of Orange County Counsel

The following persons also sent letters of support that include additional remarks, which are reproduced as Exhibits:

John G. Lyons of San Francisco (Exhibit 1)
Western Surety Company (Exhibit 2)
Wilbur L. Coats of Poway (Exhibit 3)
David W. Knapp, Sr., of San Jose (Exhibit 4)
Paul Gordon Hoffman of Los Angeles (Exhibit 5)
Ruth A. Phelps of Pasadena (Exhibit 6)
Ruth E. Ratzlaff of Fresno (Exhibit 7)
Paul H. Roskoph of Palo Alto (Exhibit 8)
Frank M. Swirles of Rancho Santa Fe (Exhibit 9)
Roger V. Marshall of Chico (Exhibit 10)

The additional remarks in these letters were uniformly positive, indicating the desirability of the recommendation. A number of the

letters pointed out typographical errors, which the staff will correct (we were already aware of these through our cite-checking process).

Only one suggestion for improvement was made. Mr. Roskoph notes that under Section 11461 of the draft an "interested person" may petition for a court order, and the Comment refers to the definition of interested person in Section 48. He wonders whether the cross reference to the definition should be incorporated in the statute itself. This would be unusual to do; the Comments are printed in the annotated codes, and the staff believes this is adequate.

The staff is pleased with the very favorable response to this recommendation and believes the Commission should approve it for printing and submission to the Legislature, after correction of the typos noted in the letters. The staff plans to include in the transmittal letter an acknowledgment of Ken Klug of the State Bar, who developed the concepts on which this recommendation is based.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

LAW OFFICES OF
VAUGHAN, PAUL & LYONS
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(415) 392-1423

FAX: (415) 392-2308

CA LAW REV. COMMITTEE

MAY 18 1990

RECEIVED

May 17, 1990

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

RE: Tentative Recommendation relating to
Probate Law and Procedure
Debts that are Contingent, Disputed
or Not Due

Gentlemen:

I approve of this recommendation, particularly
the proposed repeal of Section 11425.

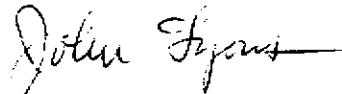
Two small suggestions:

- (1) In the third line on Page 7
- (2) In the first line of proposed Section 11463, on
Page 8

Also, I presume "9870" on Page 9 is meant to
read "9370".

Copies of Pages 7, 8, and 9 with notations are
enclosed.

Very truly yours,



John G. Lyons

JGL:car
Enclosures

under Section 9353

CONTINGENT DEBTS

7

(b) A debt is "disputed" if it is a claim rejected in whole or in part under Part 4 (commencing with Section 9000) and is not barred as to the part rejected. ~~under Section 9353.~~

(c) A debt is "not due" if it is established under Part 4 (commencing with Section 9000) and will become due on the passage of time. The term includes a debt payable in installments.

Comment. The definitions in Section 11460 vary the definition of "debt" in Section 11401. See Section 11400 (definition in 11401 does not govern if provision or context otherwise requires).

Subdivision (a) is new.

Under subdivision (b), a rejected claim is not barred if within three months after the notice of rejection is given or after the claim becomes due the creditor commences an action on the claim or the matter is referred to a referee or to arbitration.

Subdivision (c) incorporates the aspect of former Section 11426 that related to installment debts.

§ 11461. Court order

11461. When all other debts have been paid and the estate is otherwise in a condition to be closed, on petition by an interested person, the court may make or modify an order or a combination of orders under this chapter that the court in its discretion determines is appropriate to adequately provide for a debt that is contingent, disputed, or not due if the debt becomes absolute, established, or due. Notice of the hearing on the petition shall be given as provided in Section 1220 to the creditor whose debt is contingent, disputed, or not due, as well as to the persons provided in Section 11601.

Comment. Section 11461 is correlative with Section 11640 (order for final distribution when all debts have been paid or adequately provided for). The term "interested person" is defined in Section 48.

§ 11462. Agreement of interested persons

11462. Notwithstanding any other provision of this chapter, if the court determines that all interested persons agree to the manner of providing for a debt that is contingent, disputed, or not due and that the agreement reasonably protects all

interested persons and will not extend administration of the estate unreasonably, the court shall approve the agreement.

Comment. Section 11462 is new. Regardless of the other techniques provided in this chapter for securing payment, if all interested persons agree and the agreement reasonably protects them, the court must ratify the agreement (unless the agreement requires administration of the estate to be continued for an unreasonable length of time). The agreement may require, for example, immediate payment of a debt that is disputed, contingent, or not due, if the interested persons are able to work out a satisfactory discount, compromise, or settlement. Cf. former Section 11425 (right of creditor to payment of debt not due if interest is waived). The term "interested person" is defined in Section 48.

§ 11463. Deposit in account withdrawable only on court order

→ 11463. The court may ^(order) an amount ~~order~~ deposited in a financial institution, as provided in Chapter 3 (commencing with Section 9700) of Part 5, that would be payable if a debt that is contingent, disputed, or not due were absolute, established, or due. The order shall provide that the amount deposited is subject to withdrawal only upon authorization of the court, to be paid to the creditor when the debt becomes absolute, established, or due, or to be distributed in the manner provided in Section 11642 if the debt does not become absolute or established.

Comment. Section 11463 replaces the deposit in court of former Section 11427 with deposit in a blocked account. The reference to Section 11642 incorporates any omnibus order for final distribution or subsequent court order for distribution.

§ 11464. Distribution subject to assumption of liability

11464. (a) The court may order property in the estate distributed to a person entitled to it under the final order for distribution, if the person files with the court an assumption of liability for a contingent or disputed debt as provided in subdivision (b). The court may impose any other conditions the court in its discretion determines are just, including that the distributee give a security interest in all or part of the

property distributed or that the distributee give a bond in an amount determined by the court.

(b) As a condition for an order under subdivision (a), each distributee shall file with the court a signed and acknowledged agreement assuming personal liability for the contingent or disputed debt and consenting to jurisdiction within this state for the enforcement of the debt if it becomes absolute or established. The personal liability of each distributee shall not exceed the fair market value on the date of distribution of the property received by the distributee, less the amount of liens and encumbrances. If there is more than one distributee, the personal liability of the distributees is joint and several.

(c) If the debt becomes absolute or established, it may be enforced against each distributee in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the distributee may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died.

(d) The statute of limitations applicable to a contingent debt is tolled from the time the creditor's claim is filed until 30 days after the order for distribution becomes final. The signing of an agreement under subdivision (b) neither extends nor revives any limitation period.

Comment. Section 11464 is new. It provides for assumption of personal liability to the creditor and the right of the creditor to enforce the liability against the distributee.

A bond requirement under subdivision (a) may be satisfied by a cash deposit. Code Civ. Proc. § 995.710 (deposit in lieu of bond).

Tolling of the limitation period for contingent claims under subdivision (d) supplements Section 9352 (tolling during administration). The limitation period applicable to a disputed claim is governed by Sections 9353 and 9870.

§ 11465. Appointment of trustee

11465. (a) The court may order that a trustee be appointed to receive payment for a debt that is contingent, disputed, or



Office of General Counsel

May 21, 1990

CA LAW REV. COMM'N

MAY 24 1990

RECEIVED

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

Dear Mr. Sterling:

IN REPLY REFER TO:
Special File CA-4372-F - California Lobbying
Memorandum 90-74 and Tentative Recommendation
Relating to Probate Law and Procedure, Debts that
are Contingent, Disputed, or Not Due

This Company is in agreement with the suggestions contained in your Memorandum of May 15, 1990, relating to limitations on personal sureties. Please advise if we can furnish any additional information to facilitate your efforts.

We are also in agreement with proposed new probate § 11466 permitting distribution subject to bond. Thank you for keeping us on the mailing list for recommendations relating to probate law and procedure.

Yours very truly,

DAN L. KIRBY

DLK:gm

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

MAY 29 1990

RECEIVED

TELEPHONE (619) 748-6512

May 25, 1990

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

In re: Tentative Recommendation on:

Probate Law Procedure;
Remedies of Creditor Where Personal Representative
Fails to Give Notice;
Elimination of Seven-Year Limit Durable Powers Of
Attorney for Health Care; and
Alternate Beneficiaries for Unclaimed Distribution.

Dear Administrator:

I agree with the tentative recommendations as proposed for all of the above cited sections of the Probate Code.

I found one typographical error in the first sentence of the proposed Section 11463. I have attached a photocopy of the proposed Section pointing out the typing error.

Reference to the note on Probate Code Section 11603 (amended) concerning a three-year or four-year period for the primary distributee to claim distribution. I believe three years should be adequate. If a four-year period is set forth it will shorten the alternate distributee's claim period to one year unless you extend the time delay for the assets to escheat to the state. Two years for the alternate distributee appears to be more equitable.

Very truly yours,


Wilbur L. Coats

Encl.

interested persons and will not extend administration of the estate unreasonably, the court shall approve the agreement.

Comment. Section 11462 is new. Regardless of the other techniques provided in this chapter for securing payment, if all interested persons agree and the agreement reasonably protects them, the court must ratify the agreement (unless the agreement requires administration of the estate to be continued for an unreasonable length of time). The agreement may require, for example, immediate payment of a debt that is disputed, contingent, or not due, if the interested persons are able to work out a satisfactory discount, compromise, or settlement. *Cf.* former Section 11425 (right of creditor to payment of debt not due if interest is waived). The term "interested person" is defined in Section 48.

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MAY 29 1990

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DAVID W. KNAPP, SR.
DAVID W. KNAPP, JR.

LAW OFFICES
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1093 LINCOLN AVENUE
SAN JOSE, CALIFORNIA 95125
TELEPHONE (408) 298-3838

May 25, 1990

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 943303-4739

Re: PROBATE LAW & PROCEDURE Contingent Debts etc

I read with interest your worthy tentative recommendation on above matter and I am totally in agreement with the same.

Some of us "old-timers" have been doing such for many years in the form of a "reservation request" to the Court, however this codifies it.

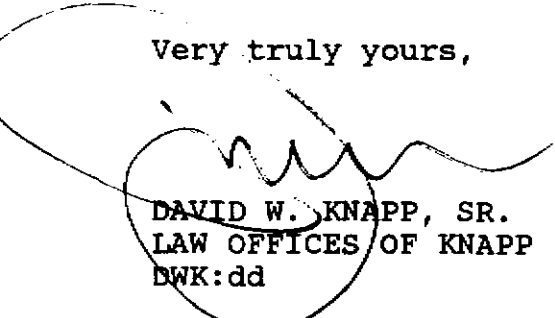
I will assume you have already been alerted about the error on page 8 wherein it should state:

"The court may order an amount deposited..." instead of:

"The court may an amount order deposited..."

Keep up the commendable work you are doing.

Very truly yours,


DAVID W. KNAPP, SR.
LAW OFFICES OF KNAPP & KNAPP
DWK:dd

HOFFMAN
SABAN &
BRUCKER

LAWYERS

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JUN 01 1990

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May 29, 1990

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

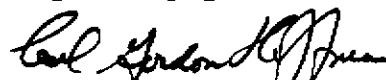
Re: Tentative Recommendation Relating to
Probate Law and Procedure --
Debts That Are Contingent, Disputed or Not Due

Ladies and Gentlemen:

I agree that changes are required in this area and I endorse the approach adopted by the tentative recommendation. For example, I have been involved with situations where my client was entitled to receive payments based on the profits of a motion picture, and the client's agent was entitled to a fee of 10% of all amounts received. The only way of adequately dealing with this situation is to order distribution of the profit participation to a distributee, subject to the obligation to pay the 10% fee to the agent.

I have also seen situations where a plaintiff used the existence of a suit against an estate as a "bargaining chip" in exacting a higher price for dropping the suit. The plaintiff knew that as long as the suit was outstanding, the beneficiaries could not receive their distributions, and the plaintiff delayed resolving the suit feeling that the beneficiaries would put pressure on the executor to settle the suit for more than the claim was really worth, so that the beneficiaries could receive their distributions.

Very truly yours,



Paul Gordon Hoffman

PGH34:wb

-9-

Edward M. Phelps
Deborah Ballins Schwarz
Ruth A. Phelps
Of Counsel
Barbara E. Dunn

Phelps, Schwarz & Phelps

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JUN 04 1990

R E C E I V E D
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May 31, 1990

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

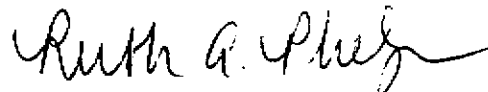
Re: Tentative Recommendation Relating to
Probate Law and Procedure, Debts that are
Contingent, Disputed or Not Due.

Dear Sirs/Madam:

I have read the Tentative Recommendation Relating to Probate
Law and Procedure, Debts that are Contingent, Disputed or Not Due.

I don't have any suggestions to make it better. I think you are
doing a fine job. I think this is a good idea and I agree with this tentative
recommendation.

Very truly yours,



Ruth A. Phelps
PHELPS, SCHWARZ & PHELPS

RAP:svt

JUN 04 1990

RECEIVED

RUTH E. RATZLAFF
Attorney at Law
925 N Street, Suite 150
P.O. Box 411
Fresno, California 93708
(209) 422-8018

May 31, 1990

RE: Tentative Recommendation Related to Probate Debts

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

Dear Commissioners:

I have reviewed your tentative recommendation relating to debts that are contingent, disputed, or not due in probate proceedings.

The recommendations you suggest seem logical and very workable.

Sincerely,


Ruth E. Ratzlaff

RER/dr

FENWICK, DAVIS & WEST

A LAW PARTNERSHIP INCLUDING
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June 1, 1990

CA LAW REV. COMM'N

JUN 04 1990

RECEIVED

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739Re: Comments on Tentative Recommendations

Gentlemen:

I am responding to five tentative recommendations issued by your organization pertaining to modifications of the Probate Code.

1. Contingent, Disputed or Not Due Debts:

Your proposal of April 1990 is excellent and I believe should be submitted as proposed. My only question relates to the use of the term "interested person." As you note in your comment, the term "interested person" is already defined in Section 48 of the Probate Code. Would it be redundant to expressly reference the definition of Section 48, which includes a creditor and would permit a creditor to petition the court. This would be appropriate if the executor failed to do so.

2. Creditor Remedies:

The recommendation relating to a personal representative who deals in bad faith makes no attempt to define the scope of bad faith. Perhaps it is your desire that this be left to a court to determine, but it seems appropriate that some definition be included when the purpose of this proposal is to expand the remedies of creditors for that specific purpose. Since bad faith may be very subjective, it might assist to provide specific examples which would be considered bad faith and for which the burden of proof might be imposed upon the personal representative. Such instances might include the intentional disregard of known or readily available evidence of the debt.

3. Alternate Beneficiaries for Unclaimed Distribution:

This is an excellent proposal.

4. Elimination of Seven-Year Limit for Durable Powers of Attorney:

I heartily concur. I have never understood why a limitation should be imposed; furthermore, if it is to be limited, I do not understand why it should differ from the limitation upon the directive to physicians. I concur with your proposal that the limitation be eliminated completely.

5. Litigation Involving Decedents:

Your proposal regarding litigation involving decedents is excellent. The ability to continue these actions without commencing a probate and appointing a personal representative is most practical. I have not had an opportunity to fully evaluate this proposal, but I support its intent and purpose. I will leave to those with greater litigation experience the full analysis of your proposal.

Very truly yours,



Paul H. Roskoph

PHR/rer
PHR248/1637:2

FRANK M. SWIRLES
LAW CORPORATION

CA LAW REV. COMM'N

JUN 13 1990

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June 9, 1990

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

Re: Tentative Recommendations on

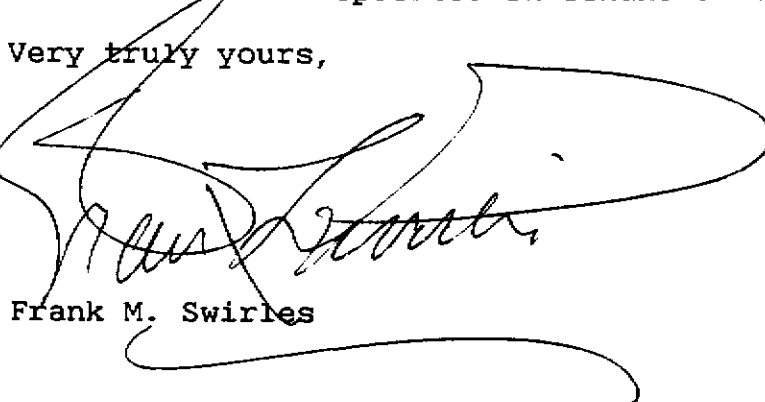
Probate Law and Procedure - Debts that are
Contingent, etc.

Gentlemen:

While your recommendation is basically good, I find it difficult to read the first sentence of section 11463. It now reads, "The court may an amount order deposited in a financial "

Would this not make more sense if it were to read, "The court may order an amount deposited in financial " ?

Very truly yours,



Frank M. Swirles

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RANCHO SANTA FE, CALIFORNIA 92067
(619) 750-2040

Marshall, Burghardt & Kelleher
Attorneys at Law

R E C E I V E D

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June 11, 1990

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(916) 895-1512
FAX (916) 895-0844

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

RE: Comments to Tentative Recommendation

To Whom It May Concern:

1. Probate Law and Procedure - Debts that are Contingent, Disputed, or Not Due.

We feel that this tentative recommendation is advisable as it provides flexibility to facilitate distribution and closing of an estate and, at the same time, provide for protection to the creditors and the estate's beneficiaries. Keeping an estate open until all issues involving debts are resolved or satisfied is not acceptable.

2. Elimination of Seven-Year Limit for Durable Powers of Attorney for Health Care.

While we do agree that a Durable Power of Attorney For Health Care should be reviewed on an established time basis, we also understand and agree with the statement that our clients are not efficient in reviewing and possibly renewing this statement every seven years. It has been our experience that even if reminded and encouraged to update their estate planning, clients often procrastinate. Also, quite often, we are unable to locate a client who has moved. Therefore, providing assurance that the Durable Power of Attorney For Health Care is in existence when it is necessary is more important than forcing an analysis and review by terminating the document if it is not actively renewed.

3. Alternate Beneficiaries for Unclaimed Distribution.

We agree that most testators would prefer to have unclaimed property go to an alternate taker rather escheat to the State.

Therefore, we agree with this recommendation. We do agree that the three year period for the primary distributee to claim his or her share is too short. We would be more agreeable to a five year time period.

4. Remedies of Creditor Where Personal Representative Fails to Give Notice.

We agree with this recommendation as a preliminary distribution is usually completed because of a matter of convenience to the beneficiary and should not be used as a device to defeat creditors who have failed to receive notice because of the bad faith of the personal representative. Therefore, we support this change in law.

Very truly yours,



ROGER V. MARSHALL

RVM/kc

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

Probate Law and Procedure

Debts that are Contingent, Disputed, or Not Due

April 1990

This tentative recommendation is being distributed so interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission are a public record, and will be considered at a public meeting of the Commission. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe it should be revised.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN JUNE 30, 1990.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

**CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739**

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2
PALO ALTO, CA 94303-4739
(415) 494-1335

EDWIN K. MARZEC
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BION M. GREGORY
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SENATOR BILL LOCKYER
ARTHUR K. MARSHALL
FORREST A. PLANT
ANN E. STODDEN

Letter of Transmittal

This recommendation proposes procedures to facilitate distribution and closing of an estate while providing for unpaid debts against the estate that are contingent, disputed, or not due. Under this recommendation the court could order the estate distributed after making appropriate arrangements for the debt, such as payment into a blocked account in a financial institution subject to court order, payment to a trustee, or requirement of a bond or other security or an assumption of liability by the distributee.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

RECOMMENDATION

Ordinarily, debts of a decedent are paid during estate administration and, if there is any excess after all debts are paid, distribution is made to the beneficiaries. This standard pattern may be disrupted in a number of situations. A debt owed by the decedent may not be due and payable at the time when debts are ordinarily paid; this may occur, for example, where a loan is payable in installments, or where there is a balloon payment at a later time. The decedent's liability may be contingent and the contingency may not be resolved until much later; common examples of contingent debts include loan guarantees, deficiency liability on a secured loan, and concurrent liability with another person such as a partner or a joint maker of a promissory note. If a creditor commences an action on a debt where the personal representative denies liability, there may be substantial delay until the liability is resolved.

Keeping the estate open and not making distribution until all issues involving debts that are contingent, disputed, or not due are resolved is ordinarily not a satisfactory approach. The decedent's ultimate liability exposure on a contingent debt may be small but, until the matter is resolved, a large contingent debt can effectively tie up the estate. Likewise, there may be a disputed debt on which the alleged liability exceeds the value of the estate; in this case, no matter how unmeritorious the lawsuit appears, the full disputed amount must be held in court until the matter is resolved, which may be many years.

Estates normally have neither the ability nor right to discharge the entire indebtedness to satisfy the claim, and must therefore be kept open until the contingency which establishes the debt either occurs or fails. In these cases, the estate beneficiaries are not only deprived of enjoyment of their interests until the obligation is paid, but estate expenses

are increased by costs of complying with accounting and income tax filing requirements.

For these reasons existing law offers a few options:

(1) If a creditor whose debt is not yet due is willing to waive interest, the creditor may be paid immediately.¹

(2) In the case of a contingent or installment debt, a trust fund may be set up to cover the potential liability, the trustee to pay the debt or distribute the fund to beneficiaries, as the circumstances ultimately require.²

(3) If neither of these two options is used, the full amount of a not due, contingent, or disputed debt must be paid into court and held until the liability is resolved.³

These remedies are quite limited. Other remedies should be provided that will enable the estate to be closed without compromising the rights of the creditor. The Law Revision Commission recommends enactment of procedures that will add flexibility to the remedies available to the court and help ensure that the creditor gets what is due without forcing the estate to be kept open until the debt is paid. Specifically:

(1) If all parties agree on a solution, whether it involves posting security, discounting or compromising a claim, or even keeping the estate open, the agreement should be honored and the court should be required to ratify the agreement if it reasonably protects the rights of all parties and will not unreasonably prolong administration.

(2) The amount at issue could be deposited in a blocked account in a financial institution, withdrawable on court order when the matter is resolved.

(3) The existing authority to appoint a trustee in the case of a contingent or installment debt should be expanded to cover other debts not yet due and disputed debts as well.

1. Prob. Code § 11425. It is not clear from this section whether the face amount of the debt may be discounted if the debt is interest-free until the due date.

2. Prob. Code § 11426.

3. Prob. Code § 11427.

(4) The court should be permitted to order the property distributed and the estate closed after assuring adequate protection to the creditor by means such as requiring a bond or other security, imposing a lien on property, or requiring an assumption of liability by distributees.

(5) The court should continue to have the authority it has under existing law to require that the estate be kept open if that appears most appropriate in the circumstances of the particular estate.

The basic concept is that the court should have available a variety of different remedies and the flexibility to provide a reasonable accommodation of interests depending on the circumstances of the particular case.

PROPOSED LEGISLATION

Probate Code § 11425 (repealed). Payment of debt not due
~~11425. If a creditor whose debt is not due waives interest for the time until the debt is due, the creditor is entitled to payment of the debt.~~

Comment. Former Section 11425 is not continued. It is superseded by Section 11462 (agreement of interested persons).

Probate Code § 11426 (repealed). Trust for installment or contingent debt

~~11426. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is contingent or is payable in installments shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.~~

~~(b) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the~~

~~trustee shall be paid or distributed in accordance with the order for distribution.~~

Comment. Former Section 11426 is continued in Section 11465 (appointment of trustee) and broadened to apply to debts that are disputed or otherwise not due as well as debts that are contingent or payable in installments.

Probate Code § 11427 (repealed). Disputed and contingent debts

~~11427. Except as otherwise provided in this part, if a debt is not due or is contingent, or if a claim is disputed, the amount of the debt or claim or the part that would be payable if the debt were due or absolute or the claim established, shall be paid into court. The amount paid into court shall remain there, to be paid to the creditor when the debt is due or absolute or the claim is established or, if the claim is not established, to be paid or distributed as the circumstances of the estate require.~~

Comment. Former Section 11427 is continued in Section 11463 (deposit in account withdrawable only on court order), except that the deposit in court is replaced by deposit in a blocked account.

Probate Code §§ 11460-11467 (added). Debts that are contingent, disputed, or not due

**CHAPTER 4. DEBTS THAT ARE CONTINGENT,
DISPUTED, OR NOT DUE**

§ 11460. Definitions

11460. As used in this chapter:

(a) A debt is "contingent" if it is established under Part 4 (commencing with Section 9000) in either a fixed or an uncertain amount and will become absolute on occurrence of a stated event other than the passage of time. The term includes a secured obligation for which there may be recourse against property in the estate, other than the property that is the security, if the security is insufficient.

(b) A debt is "disputed" if it is a claim rejected in whole or in part under Part 4 (commencing with Section 9000) and is not barred as to the part rejected under Section 9353.

(c) A debt is "not due" if it is established under Part 4 (commencing with Section 9000) and will become due on the passage of time. The term includes a debt payable in installments.

Comment. The definitions in Section 11460 vary the definition of "debt" in Section 11401. See Section 11400 (definition in 11401 does not govern if provision or context otherwise requires).

Subdivision (a) is new.

Under subdivision (b), a rejected claim is not barred if within three months after the notice of rejection is given or after the claim becomes due the creditor commences an action on the claim or the matter is referred to a referee or to arbitration.

Subdivision (c) incorporates the aspect of former Section 11426 that related to installment debts.

§ 11461. Court order

11461. When all other debts have been paid and the estate is otherwise in a condition to be closed, on petition by an interested person, the court may make or modify an order or a combination of orders under this chapter that the court in its discretion determines is appropriate to adequately provide for a debt that is contingent, disputed, or not due if the debt becomes absolute, established, or due. Notice of the hearing on the petition shall be given as provided in Section 1220 to the creditor whose debt is contingent, disputed, or not due, as well as to the persons provided in Section 11601.

Comment. Section 11461 is correlative with Section 11640 (order for final distribution when all debts have been paid or adequately provided for). The term "interested person" is defined in Section 48.

§ 11462. Agreement of interested persons

11462. Notwithstanding any other provision of this chapter, if the court determines that all interested persons agree to the manner of providing for a debt that is contingent, disputed, or not due and that the agreement reasonably protects all

interested persons and will not extend administration of the estate unreasonably, the court shall approve the agreement.

Comment. Section 11462 is new. Regardless of the other techniques provided in this chapter for securing payment, if all interested persons agree and the agreement reasonably protects them, the court must ratify the agreement (unless the agreement requires administration of the estate to be continued for an unreasonable length of time). The agreement may require, for example, immediate payment of a debt that is disputed, contingent, or not due, if the interested persons are able to work out a satisfactory discount, compromise, or settlement. *Cf.* former Section 11425 (right of creditor to payment of debt not due if interest is waived). The term "interested person" is defined in Section 48.

§ 11463. Deposit in account withdrawable only on court order

11463. The court may an amount order deposited in a financial institution, as provided in Chapter 3 (commencing with Section 9700) of Part 5, that would be payable if a debt that is contingent, disputed, or not due were absolute, established, or due. The order shall provide that the amount deposited is subject to withdrawal only upon authorization of the court, to be paid to the creditor when the debt becomes absolute, established, or due, or to be distributed in the manner provided in Section 11642 if the debt does not become absolute or established.

Comment. Section 11463 replaces the deposit in court of former Section 11427 with deposit in a blocked account. The reference to Section 11642 incorporates any omnibus order for final distribution or subsequent court order for distribution.

§ 11464. Distribution subject to assumption of liability

11464. (a) The court may order property in the estate distributed to a person entitled to it under the final order for distribution, if the person files with the court an assumption of liability for a contingent or disputed debt as provided in subdivision (b). The court may impose any other conditions the court in its discretion determines are just, including that the distributee give a security interest in all or part of the

property distributed or that the distributee give a bond in an amount determined by the court.

(b) As a condition for an order under subdivision (a), each distributee shall file with the court a signed and acknowledged agreement assuming personal liability for the contingent or disputed debt and consenting to jurisdiction within this state for the enforcement of the debt if it becomes absolute or established. The personal liability of each distributee shall not exceed the fair market value on the date of distribution of the property received by the distributee, less the amount of liens and encumbrances. If there is more than one distributee, the personal liability of the distributees is joint and several.

(c) If the debt becomes absolute or established, it may be enforced against each distributee in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the distributee may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died.

(d) The statute of limitations applicable to a contingent debt is tolled from the time the creditor's claim is filed until 30 days after the order for distribution becomes final. The signing of an agreement under subdivision (b) neither extends nor revives any limitation period.

Comment. Section 11464 is new. It provides for assumption of personal liability to the creditor and the right of the creditor to enforce the liability against the distributee.

A bond requirement under subdivision (a) may be satisfied by a cash deposit. Code Civ. Proc. § 995.710 (deposit in lieu of bond).

Tolling of the limitation period for contingent claims under subdivision (d) supplements Section 9352 (tolling during administration). The limitation period applicable to a disputed claim is governed by Sections 9353 and 9870.

§ 11465. Appointment of trustee

11465. (a) The court may order that a trustee be appointed to receive payment for a debt that is contingent, disputed, or

not due. The court in determining the amount paid to the trustee shall compute the present value of the debt, giving consideration to a reasonable return on the amount to be invested. The trustee shall invest the payment in investments that would be proper for a personal representative or as authorized in the order.

(b) The trustee shall pay the debt as provided in the order. On completion of payment, any excess in possession of the trustee shall be distributed in the manner provided in Section 11642.

Comment. Section 11465 continues former Section 11426 without substantive change and broadens it to apply to debts that are disputed or otherwise not due as well as debts that are contingent or payable in installments. The reference to Section 11642 incorporates any omnibus order for final distribution or subsequent court order for distribution.

§ 11466. Distribution subject to bond

11466. The court may order property in the estate distributed to a person entitled to it under the final order for distribution, if the person gives a bond conditioned on payment by the person of the amount of a contingent or disputed debt that becomes absolute or established. The amount of the bond shall be determined by the court, not to exceed the fair market value on the date of distribution of the property received by the distributee, less the amount of liens and encumbrances. In the case of a disputed debt or in the case of a contingent debt where litigation is required to establish the contingency, the cost of the bond is recoverable from the unsuccessful party as a cost of litigation.

Comment. Section 11466 is new.

§ 11467. Continuation of administration

11467. The court may order that the administration of the estate continue until the contingency, dispute, or passage of time of a debt that is contingent, disputed, or not due is resolved.

Comment. Section 11467 gives the court authority to order continuation of administration, if appropriate. This is a specific application of the general authority of the court to order continuation of administration for a reasonable time. Section 11640(c); see also Section 12201 (report of status of administration).

