

## Memorandum 90-93

Subject: Study L-100 - Alternate Beneficiaries for Unclaimed Distribution (Comments on TR)

Attached is the *Tentative Recommendation Relating to Alternate Beneficiaries for Unclaimed Distribution*. We have received 13 letters commenting on the TR, 12 in support and one equivocal. We also received two sets of comments handwritten on the face of the TR, both in support. One of the handwritten comments, from attorney Margaret Roisman in Oakland, said, "I highly approve this recommendation. It would have saved a great deal of aggravation and unhappiness by contingent beneficiaries in a case I recently probated."

The staff also sent the TR to the Attorney General's Office where it was forwarded to the California Controller for comment. Deputy Attorney General Yeoryios Apallas is coordinating the review. Robert Shuman, Chief Counsel, is the responsible attorney in the Controller's Office, but we do not have their comments yet.

The letters are attached as Exhibits 2 through 14:

Exhibit 2: Paul Gordon Hoffman  
Exhibit 3: David W. Knapp, Sr.  
Exhibit 4: Wilbur L. Coats  
Exhibit 5: Ruth A. Phelps  
Exhibit 6: Irwin D. Goldring  
Exhibit 7: Roger V. Marshall  
Exhibit 8: Frank M. Swirles  
Exhibit 9: Paul H. Roskoph  
Exhibit 10: Patricia H. Jenkins  
Exhibit 11: Henry Angerbauer  
Exhibit 12: John G. Lyons  
Exhibit 13: Ruth E. Ratzlaff  
Exhibit 14: Stuart D. Zimring

Distributee Whose Identity Is Unknown

The TR makes a distinction between a distributee whose identity is unknown, and one whose identity is known but whose whereabouts is unknown. Jim Quillinan says the staff's assumption is incorrect that the court would order distribution to a distributee whose identity is unknown. In such a case, he says the personal representative would petition for heirship under Probate Code Sections 11700-11705. The court would resolve the question before distribution, and would not

order distribution to a person whose identity is unknown. Mr. Quillinan's view is supported by Probate Code Section 11900: "The court shall order property that is not ordered distributed to known beneficiaries to be distributed to the state."

In Exhibit 1 to this Memorandum, the staff has revised Section 11603 to apply only to the case where the distributee's identity is known but whose whereabouts is unknown.

#### How Long Should Primary Distributee Have to Claim the Property?

As revised in Exhibit 1, the TR provides that, if the whereabouts of a distributee is unknown, the court's order shall provide that if the distributee fails to claim his or her share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent. The order shall name the distributees and the share to which each is entitled if the primary distributee does not claim the share within the three-year period. A note to the section asks whether the proposed three-year period is too short.

The time period for the primary distributee to claim the share should be less than five years to allow time for alternate distributees to claim the share. After five years, unclaimed property escheats to the state. Prob. Code § 11903. The staff chose the three-year period because it seemed to be a fair balance between the interests of the primary and alternate distributees -- the primary distributee has three years to claim the share, and the alternate distributee has two years.

Of the nine commentators who addressed this question, six thought three years was ample time for the primary distributee to claim the share (Exhibits 2, 4, 5, 8, 13, and handwritten comment of Linda Silveria). Three commentators preferred four or even five years (Exhibits 3, 6, and 7). In view of the large majority favoring three years, the staff recommends we keep the three-year period for the primary distributee.

#### Reopen Estate Proceeding if Primary Distributee Cannot Be Found?

David Knapp (Exhibit 2) thought that before the court can distribute the primary distributee's share to the alternate beneficiary, the personal representative should be required to show diligence in trying to find the primary distributee. The problem with this is that when the three-year period expires, the estate has long

been closed and the personal representative discharged. Reasonable notice must be given to all beneficiaries during the estate proceeding. See 1 California Decedent Estate Practice § 6.29 (Cal. Cont. Ed. Bar, Feb. 1989). If the scheme in the TR is to work economically, it must be self-executing, and not require the estate proceeding to be reopened.

#### Who Holds the Property Pending the Claim?

If the probate court orders distribution to a person whose whereabouts is unknown, the personal representative may deposit the property with the county treasurer. Prob. Code § 11850. The distributee may claim the property by petitioning the probate court. *Id.* § 11854. This was unclear to three commentators (Exhibits 3, 5 and 8). The staff recommends making this clearer by adding the following to the Comment:

In cases to which subdivision (c) applies, the personal representative may deposit the property with the county treasurer. Section 11850. For money, no court order is required for the deposit. For other personal property, a court order is required. Section 11851. A person may claim the money or other personal property on deposit in the county treasury by filing a petition with the probate court. Section 11854.

#### Scheme Applies Both in Testate and Intestate Estates

Section 11603, providing for the court's order for final distribution, applies both in testate and intestate estates. Ruth Ratzlaff (Exhibit 13) notes that the narrative portion of the TR says most "testators" would prefer the property to go to an alternate taker rather than escheat. The staff recommends changing "testators" to "decedents."

Irwin Goldring (Exhibit 6) suggests that the statute specify to whom distribution is to be made, whether under intestate succession law or under a will. The staff thinks this is a good suggestion, and has included appropriate language in Section 11603 and Comment in Exhibit 1.

#### Treat Unknown Distributee as Having Predeceased Without Issue?

The TR provides that if the primary distributee fails to claim his or her share within the prescribed time, he or she is "deemed to have predeceased the decedent." In a testate estate, the antilapse statute (Section 6147) will substitute issue of the missing distributee if he

or she is kindred of the decedent or is kindred of a surviving, deceased, or former spouse of the testator. Otherwise, the gift will lapse. In an intestate estate, the missing distributee's issue will be next in line to inherit. See Prob. Code §§ 6402, 6402.5.

Ruth Ratzlaff (Exhibit 13) would preclude issue of the missing distributee from taking in his or her place: "A testator's attorney dealing with a child who has disappeared would have the wisdom to draft a Will which provided that if the child didn't surface within a certain period of time, he or she would be treated as if they had predeceased the testator without issue." She suggests the proposed legislation do the same.

The staff is opposed to this suggestion. Both the antilapse statute and intestate succession law are based on the presumed intention of most decedents. We see no reason to depart from general law in this case.

#### Application to Trust Law

Paul Hoffman (Exhibit 2) says the revisions proposed in the TR should also be applied to living trusts. He would provide that "if a distributee under a trust cannot be located within three years or after the time at which distribution is to be made to him or her, then the alternate taker should be entitled to inherit."

Judicial proceedings concerning trusts are optional. A trustee or beneficiary may petition the court for "[a]scertaining beneficiaries and determining to whom property shall pass or be delivered upon final or partial termination of the trust, to the extent the determination is not made by the trust instrument." Prob. Code § 17200. This makes the trust situation slightly different from decedents' estates, because there must be an order for final distribution in a decedent's estate.

Nonetheless, the problem the trustee faces on termination of the trust when a remainder beneficiary cannot be found is more burdensome than that of the personal representative: The personal representative gets rid of the property by turning it over to the county treasurer or the state (*id.* §§ 11850, 11900), but the trustee must hold it for five years before it escheats. Code Civ. Proc. § 1518; California Trust Administration § 12.41, at 490 (Cal. Cont. Ed. Bar, 1990 rev.). Perhaps the court may now make an order providing for alternate

beneficiaries either under Section 17200 or under general equitable powers, but this is not clear.

Professor Susan French has recommended that uniform rules of construction be adopted, applicable to wills, trusts, and other donative instruments. The Commission considered this at the May 1988 meeting, and noted that the Joint Editorial Board of the Uniform Probate Code is working in this area. The Commission asked Professor French to suggest specific proposals for Commission consideration pending completion of the work of the Joint Editorial Board. We have not received these.

The staff recommends that we not try now to write into Trust Law an alternate beneficiary scheme like that proposed in the TR for decedents' estates. We should consider this suggestion in the context of the broader study of the extent to which uniform rules should be adopted for wills, trusts, and other instruments.

Respectfully submitted,

Robert J. Murphy III  
Staff Counsel

Exhibit 1Probate Code § 11603 (amended). Order for distribution

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including, but not limited to, an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

(c) ~~If the identity of a distributee is unknown, or if the a distributee's identity is known but the distributee's whereabouts is unknown,~~ the order shall:

(1) Provide that if the distributee does not claim the distributee's share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent for the purpose of this section.

(2) Name ~~the~~ alternate distributees and the share to which each is entitled under the will in a testate estate, or under the laws of intestate succession in an intestate estate, if the ~~primary~~ distributee does not claim the ~~primary~~ distributee's share within the time provided in paragraph (1).

Comment. Section 11603 is amended to add subdivision (c). Under subdivision (c), a distributee whose whereabouts is unknown has three years within which to claim the share. If the distributee fails to do so, an alternate distributee has an additional two years to claim the share before the property will escheat to the state. See Section 11903.

In cases to which subdivision (c) applies, the personal representative may deposit the property with the county treasurer. Section 11850. For money, no court order is required for the deposit. For other personal property, a court order is required. Section 11851. A person may claim the money or other personal property on deposit in the county treasury by filing a petition with the probate court. Section 11854.

Under subdivision (c), the court determines the alternate distributees under the decedent's will in testate estates, and under the laws of intestate succession in intestate estates. In a testate estate, this is determined under the will and the applicable statutes. If the distributee is kindred of the testator or kindred of a

surviving, deceased, or former spouse of the testator, the antilapse statute (Section 6147) will apply, and the issue of the missing distributee will be the alternate beneficiaries. In intestate estates, the alternate beneficiaries are determined under the laws of intestate succession. See Sections 6400-6414.

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CA LAW REV COMMISSION  
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  
Alternate Beneficiaries for  
Unclaimed Distribution

Ladies and Gentlemen:

I am in complete agreement with the above-referenced proposal. It is unquestionably true that testators would prefer distribution to the takers in default, rather than to the State of California, should it not be possible to locate the principal distributee. Three years is more than adequate, since an initial attempt to locate the distributee would commence upon the opening of the probate. Thus, the actual period of time between an attempted first contact and the date on which the property would pass to the alternate distributee would in fact be at least three and one-half years, and in many cases substantially longer.

I have on numerous occasions suggested that efforts be made to minimize differences between procedure in probate and the administration of living trusts. As more and more individuals adopt living trusts as the primary method of distributing their assets, the existence of improvements to the Probate Code becomes increasingly irrelevant if similar changes are not made to cover living trusts. Accordingly, I suggest that a comparable change be made in the trust law so as to provide that if a distributee under a trust cannot be located within three years after the time at which distribution is to be made to him or her, then the alternate taker should be entitled to inherit. I urge that in all future recommendations regarding changes in the administration of probates you make comparable provisions to cover living trusts.

Very truly yours,



Paul Gordon Hoffman

PGH34:wb



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

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CA LAW REV. COMM'N

**MAY 31 1990**

**R E C E I V E D**

May 30, 1990

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-47439

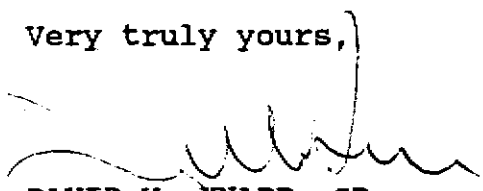
Re: TENTATIVE RECOMMENDATION  
ALTERNATE BENEFICIARIES FOR UNCLAIMED DISTRIBUTION

I highly advocate your above recommendation, however would recommend the following additions or alterations thereto:

1. That the time for the primary distributee to claim should be five (5) years or at least four (4);

2. That after that period, before the Court can distribute the primary distributee's share, there must be proof of diligence offered by the Executor as to what was done in order to locate the known distributee's whereabouts. What said proof shall be should be codified.

Very truly yours,

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

**WILBUR L. COATS**  
ATTORNEY AND COUNSELOR AT LAW

MAY 29 1990

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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.

**§ 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

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

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May 31, 1990

California Law Revision Commission  
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Palo Alto, California 94303-4739

Re: Tentative Recommendation Relating to Alternate  
Beneficiaries for Unclaimed Distribution

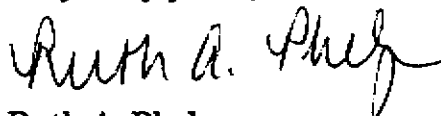
Dear Sirs/Madam:

I have read the tentative recommendation relating to Alternate  
Beneficiaries for Unclaimed Distribution.

It is a good idea. I agree with this recommendation. I have one  
question. Who holds the property for the 3 years until distribution can be  
made to the alternate distributee? Does the executor hold it? Is it depos-  
ited with the County Clerk?

I don't think the period should be lengthened to 4 years for the pri-  
mary distributee to claim his or her share. The probate will probably take  
a year or longer, so we're already 4 years post-death. That's long enough.  
If you can't stay in contact with your friends or relatives every 4 years, it  
should go to the alternate distributees.

Very truly yours,



Ruth A. Phelps  
PHELPS, SCHWARZ & PHELPS

RAP:svt

IRWIN D. GOLDRING  
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CA LAW REV COMMISSION

JUN 06 1990

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June 4, 1990

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

Re: Alternate Beneficiaries for  
Unclaimed Distribution

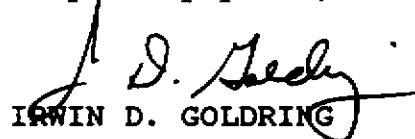
Gentlemen:

I have reviewed the tentative recommendation in regard to the above and in general agree with the concept.

I suggest, however, that there be specified in the statute to whom distribution is to be made, i.e., per the laws of intestate succession. Perhaps, it would be easier to cite the applicable sections.

Also, in answer to your inquiry concerning the time frame, I believe the period should be extended to at least five years.

Very truly yours,

  
IRWIN D. GOLDRING

IDG:hs

Marshall, Burghardt & Kelleher  
Attorneys at Law

JUN 14 1990

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Memo 90-93

EXHIBIT 7

Study L-100

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ATTORNEY AT LAW  
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ATTORNEY AT LAW

June 11, 1990

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.

California Law Revision Commission  
June 11, 1990  
Page Two

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



FRANK M. SWIRLES  
LAW OFFICE  
June 15, 1990

JUN 18 1990  
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California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

Re: Tentative Recommendations on:

Remedies of Creditor where personal representative  
fails to give notice

and

Alternate beneficiaries for unclaimed distribution

Gentlemen:

Re the remedy of creditor matter, what is the reason for your proposed 9103(2)(b)? Why does it not apply to an open debt of the decedent as well as to an action or a proceeding? Also, why do you rule out trade debts which arise out of the creditor's conduct of a trade, business, or profession? Business people are often the prey of frauds. They should be protected.

Re the alternate beneficiaries, the 3 year period is sufficient. But, during the possible 5 year gap, what becomes of the property? Is it just in limbo? Does the personal representative hold it? Is he liable for it? Who pays the insurance on it?

Very truly yours,

Frank M. Swirles

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## FENWICK, DAVIS &amp; WEST

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June 1, 1990

CA LAW REV. COMM'N

JUN 04 1990

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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

JUN 08 1990

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Study L-100

Memo 90-93

EXHIBIT 10

June 4, 1990

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

Re: Tentative Recommendations

Gentlemen:

I support the following recommendations relating to:  
debts that are contingent, disputed or not due; alternate  
beneficiaries for unclaimed distribution; and elimination of  
seven-year limit for durable power of attorney for health care.

With respect to remedies of creditor where personal  
representative fails to give notice, I am concerned about what  
types of actions or failure to act would constitute bad faith  
on the part of the personal representative. For example,  
when is failure to give notice to a known creditor bad faith as  
opposed to excusable neglect?

Very truly yours,

  
PATRICIA H. JENKINS  
Attorney at Law

PHJ:cb

HENRY ANGERBAUER, CBA  
4401 WILLOW GLEN CT.  
CONCORD, CA 94525

JUN 19 1990

Study L-100  
RECEIVED

Memo 90-93

EXHIBIT 11

California Law Revision Commission 6/17/90

Re: Recommendations:

1. Litigation Involving Decedents  
No comment
2. Alternate Beneficiaries for unclaimed Distributions  
Approve your recommendation
3. Elimination of seven-year Limit for Exorable Powers of attorney for Health Care  
Approve your recommendation

Thank you for ~~letting~~ <sup>allowing</sup> me to make my  
views known

Sincerely

HA

LAW OFFICES OF  
VAUGHAN, PAUL & LYONS  
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TO: CALIF. COMM.

MAY 23 1990

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May 22, 1990

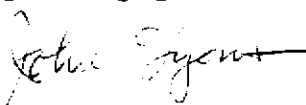
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303-4739

Re: Tentative Recommendation  
relating to Alternate  
Beneficiaries for Unclaimed  
Distribution

Gentlemen:

I approve of the proposed recommendation.  
Although it puts another burden on the probate court,  
it should not be a heavy one. Will drafters will  
have to add a provision disposing to some well-known  
organization property which becomes the subject of an  
unclaimed distribution.

Very truly yours,

  
John G. Lyons

JGL:car

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CA LAW REV. COMMISSION

JUN 04 1990

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May 31, 1990

RE: Tentative Recommendations Relating to Alternate  
Beneficiaries for Unclaimed Distribution

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

Dear Commissioners:

I have reviewed your tentative recommendations relating to alternate beneficiaries for unclaimed distribution. I understand the objective you wish to reach, but I am not sure that your tentative recommendation obtains that objective.

If the identity of the distributee is unknown or if the distributee's identity is known but the distributee's whereabouts are unknown, it logically follows that the identity of those persons who would succeed to the distributee's interest, had the distributee predeceased, the decedent might easily also be unknown. The fact situation I am thinking of involves a child of the decedent who may have disappeared for parts unknown in his or her youth and whether that child had children might also be unknown.

Although your comment to the section refers to "testators", it is equally likely that persons who die intestate would also wish this result. A testator's attorney dealing with a child who has disappeared would have the wisdom to draft a Will which provided that if the child didn't surface within a certain period of time, he or she would be treated as if they had predeceased the testator without issue. The proposed legislation provides only that the distributee shall be deemed to have predeceased the decedent.

As to your question in the note to the comment you inquire whether three years is too short of a period of time. I believe that the three year period is ample. Extending it would only extend the bookkeeping duties of the County Treasury where the deposit has been made.

Sincerely,

  
Ruth E. Ratzlaff

JUL 02 1990

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Palo Alto, California 94303-4739

Re: Tentative Recommendations Relating to Alternate  
Beneficiaries for Unclaimed Distribution and Elimination  
of Seven Year Limit for Durable Powers of Attorney for  
Health Care

Gentlemen:

I support your tentative recommendations regarding alternate beneficiaries for unclaimed distribution. I have had a number of probates in the last several years where unclaimed bequests have essentially gone "down the drain" because the named beneficiary could not be found. While the decedent had other heirs or devisees who could have benefitted from the gift, because of existing law, the monies eventually escheated to the State. Thus, I think your recommendation is a good one.

With regards to the seven year limit for Durable Powers of Attorney for Health Care, I also endorse your recommendation. The seven year limitation is one of the few things my clients consistently inquire about, uniformly asking why the Durable Power can only last seven years. From a pragmatic standpoint, it also adds another layer of "follow-up" to our filing system that I do not believe is necessary.

Sincerely,

LEVIN, BALLIN, PLOTKIN, ZIMRING, GOFFIN & ROSS  
A Professional Corporation

By: 

STUART D. ZIMRING

SDZ:rs



STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

relating to

### Alternate Beneficiaries for Unclaimed Distribution

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 JULY 1, 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

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**Letter of Transmittal**

This recommendation requires the court to name an alternate beneficiary for a distributive share of a decedent's estate when the identity of the primary distributee is unknown, or when the distributee's identity is known but whereabouts is unknown. If the primary distributee does not claim the share within three years from the date of the order, the alternate beneficiary named in the order may claim the share.

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

## 2 ALTERNATE BENEFICIARIES FOR UNCLAIMED DISTRIBUTION

## RECOMMENDATION

If the probate court orders distribution to a person whose identity is known but whose whereabouts is unknown, the personal representative may deposit the property with the county treasurer.<sup>1</sup> The distributee may claim the property by petitioning the probate court which ordered the distribution.<sup>2</sup> If the property is unclaimed, the county ultimately turns it over to the state.<sup>3</sup>

If the distributee's identity is unknown, the probate court orders distribution directly to the state.<sup>4</sup> After the property is turned over to the state, a claimant has five years to claim it. After five years, the property belongs to the state.<sup>5</sup>

When a distributee cannot be found, most testators would prefer to have the property go to an alternate taker rather than escheat to the state. This could be accomplished by having the order of distribution name an alternate taker or takers if the property is not claimed by the primary distributee. If neither the primary nor alternate distributee claims the property within five years, it will escheat to the state.

The Commission recommends that, if the identity of a named distributee is unknown, or if the distributee's identity is known but the distributee's whereabouts is unknown, the court's order of distribution shall:

(1) Provide that if the distributee does not claim the distributee's share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent for this purpose.

(2) Name the distributees and the share to which each is entitled if the primary distributee does not claim the share within the three-year period.

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1. Prob. Code § 11850.

2. Prob. Code § 11854.

3. Code Civ. Proc. § 1444.

4. Prob. Code § 11900.

5. Prob. Code § 11903.

## PROPOSED LEGISLATION

### **Probate Code § 11603 (amended). Order for distribution**

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including, but not limited to, an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

*(c) If the identity of a distributee is unknown, or if the distributee's identity is known but the distributee's whereabouts is unknown, the order shall:*

*(1) Provide that if the distributee does not claim the distributee's share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent for the purpose of this section.*

*(2) Name the distributees and the share to which each is entitled if the primary distributee does not claim the primary distributee's share within the time provided in paragraph (1).*

**Comment.** Section 11603 is amended to add subdivision (c). Under subdivision (c), a distributee whose identity or whereabouts is unknown has three years within which to claim the distributee's share. If the distributee fails to do so, the alternate distributees have an additional two years to claim their shares before the property will escheat to the state. See Section 11903.

*Note.* Is the proposed three-year period for the primary distributee to claim his or her share too short? Should it be four years?