

Memorandum 90-99

Subject: Study L-3041 - Procedure for Creditor to Reach Nonprobate Assets (Report of State Bar Probate Section)

Probate law to a great degree is the process of discharging the decedent's debts so that the remaining property can pass to the decedent's beneficiaries. The Commission has long been concerned about the growth of nonprobate transfers of property and the extent to which they impact the rights of creditors of the decedent.

When the Commission obtained enactment of the new Trust Law in 1986, it included a provision that trust assets remain liable to creditors of the settlor after the settlor's death to the extent the settlor's probate estate is insufficient to satisfy the debts. Prob. Code § 18201. The Commission recognized at the time that this bare statement of the substantive rule lacked procedures for implementation, and that the problem of creditor rights against nonprobate assets extends far beyond trust assets. However, the State Bar Probate Section expressed an interest in the matter and a willingness to work on it, so the Commission deferred further study in deference to the Bar.

Because nothing has been enacted to deal with this problem during the past four years, the Commission at its March 1990 meeting decided to give this matter priority for Commission consideration. The staff presented some possible approaches at the April 1990 meeting, and the State Bar representative reported that a Bar team was then in the final stages of completing work on a draft statute that would provide a creditors' claims procedure for trusts. The Commission decided to defer consideration of this matter until its July meeting, when it would have a copy of the Bar team draft.

We have now received the Bar team draft. See Exhibit 1. We understand the Bar is in the process of refining the draft and circulating it for comment and possible further development. The draft provides a procedure, parallel to the procedure used in probate, for the trustee to identify and pay claims of creditors, after which further creditor claims would be barred against the trust estate.

This draft may protect the trust against potential open-ended liability for claims against the deceased settlor, and may be a useful technique to enable a trustee to cut off creditor claims with a short claim period. However, it does not respond to the issues that were of concern to the Commission. If the trustee does not initiate the notice and claim process, what rights do creditors have? May they proceed directly against trust assets or only through the personal representative in probate? Shouldn't other nonprobate assets be required to share in the payment of the settlor's debts? If so, should the sharing be done pro rata, or should the liability be joint and several, with reimbursement between the different funds? Does it make a difference if the trust is intended for support of a beneficiary?

It may be that the Bar team proposal in practice will handle the bulk of the problems that exist with nonprobate assets. But nonprobate transfers generally, not just trusts, are becoming more important--beneficiary designations in accounts, annuities, pension plans, insurance policies, etc. It would be a major undertaking, but a worthwhile one, for the Commission to draft a comprehensive statute that deals in an integrated way with application of these nonprobate assets to the decedent's debts.

The Commission needs to decide whether this is a matter it wishes to devote its resources to in light of the limited scope of the State Bar proposal.

Respectfully submitted,

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CA LAW REV. COMM'N

JUL 05 1990

R E C E I V E D

PART 7

PAYMENT OF CLAIMS, DEBTS AND EXPENSES
FROM REVOCABLE TRUST OF DECEASED SETTLOR

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1 The people of the State of California do enact as follows:

2 SECTION 1. Section 17200 of the Probate Code is amended to
3 read:

4 17200. (a) Except as provided in Section 15800, a trustee or
5 beneficiary of a trust may petition the court under this chapter
6 concerning the internal affairs of the trust or to determine the
7 existence of the trust.

8 (b) Proceedings concerning the internal affairs of a trust
9 include, but are not limited to, proceedings for any of the
10 following purposes:

11 (1) Determining questions of construction of a trust
12 instrument.

13 (2) Determining the existence or nonexistence of any
14 immunity, power, privilege, duty, or right.

15 (3) Determining the validity of a trust provision.

16 (4) Ascertaining beneficiaries and determining to whom
17 property shall pass or be delivered upon final or partial
18 termination of the trust, to the extent the partial termination of
19 the trust, to the extent the determination is not made by the trust
20 instrument.

21 (5) Settling the accounts and passing upon the acts of the
22 trustee, including the exercise of discretionary powers.

23 (6) Instructing the trustee.

24 (7) Compelling the trustee to report information about the
25 trust or account to the beneficiary, if (A) the trustee has failed
26 to submit a requested report or account within 60 days after

1 written request of the beneficiary and (B) no report or account has
2 been made within six months preceding the request.

3 (8) Granting powers to the trustee.

4 (9) Fixing or allowing payment of the trustee's compensation.

5 (10) Appointing or removing a trustee.

6 (11) Accepting the resignation of a trustee.

7 (12) Compelling redress of a breach of the trust by any
8 available remedy.

9 (13) Approving or directing the modification or termination of
10 the trust.

11 (14) Approving or directing the combination or division of
12 trusts.

13 (15) Amending or conforming the trust instrument in the manner
14 required to qualify a decedent's estate for the charitable estate
15 tax deduction under federal law, including the addition of
16 mandatory governing instrument requirements for a charitable
17 remainder trust as required by final regulations and rulings of the
18 United States Internal Revenue Service, in any case in which all
19 parties interested in the trust have submitted written agreement to
20 the proposed changes or written disclaimer of interest.

21 (16) Authorizing or directing transfer of a trust or trust
22 property to or from another jurisdiction.

23 (17) Directing transfer of a testamentary trust subject to
24 continuing court jurisdiction from one county to another.

25 (18) Approving removal of a testamentary trust from continuing
26 court jurisdiction.

1 (19) Reforming or excusing compliance with the governing
2 instrument of an organization pursuant to Section 16105.

3 (20) *Determining the liability of the trust for any debts of*
4 *a deceased settlor, provided, however, that nothing herein shall*
5 *provide standing to bring such proceeding to a person whose only*
6 *claim to assets of the decedent is as a creditor.*

7 Sec. 2. Section 18201 of the Probate Code is repealed.

8 ~~18201. Upon the death of a settlor who had retained the power~~
9 ~~to revoke the trust in whole or in part, the property that was~~
10 ~~subject to the power of revocation at the time of the settlor's~~
11 ~~death is subject to the claims on creditors of the decedent~~
12 ~~settlor's estate and to the expenses of administration of the~~
13 ~~estate to the extent that the decedent settlor's estate is~~
14 ~~inadequate to satisfy those claims and expenses.~~

15 SEC 3. Part 7 (commencing with Section 19000) is added to
16 Division 9 of the Probate Code, to read:

1 PART 7. PAYMENT OF CLAIMS, DEBTS AND EXPENSES FROM
2 REVOCABLE TRUST OF DECEASED SETTLOR

3
4 CHAPTER 1. GENERAL PROVISIONS

5 19000. As used in this part:

6 (a) "Claim" means a demand for payment for any of the
7 following, whether due, not due, or contingent, and whether
8 liquidated or unliquidated:

9 (1) Liability of the deceased settlor, whether arising in
10 contract, tort, or otherwise.

11 (2) Liability for taxes incurred before the deceased
12 settlor's death, **whether assessed before or after the deceased**
13 **settlor's death**, other than property taxes and assessments secured
14 by real property liens.

15 (3) Liability for the funeral expenses of the deceased
16 settlor.

17 (b) "Claim" does not include a dispute regarding title of a
18 deceased settlor to specific property alleged to be included in the
19 trust estate.

20 (c) "Claimant" means a person who may have a claim, as
21 defined in subdivision (a), against trust property and who has
22 filed a timely claim pursuant to Section 19100.

23 (d) "Trust" shall refer to a trust described in
24 Section 18200, or, if a portion of such a trust, that portion that
25 remained subject to the power of revocation at the deceased
26 settlor's death.

1 (e) "Deceased settlor" shall refer to a deceased person who,
2 at the time of his or her death, held the power to revoke the trust
3 in whole or in part.

4 (f) "Debts" means all claims (as heretofore defined), all
5 expenses of administration, and all other proper charges against
6 the trust estate, including taxes.

7 19001. (a) Upon the death of a deceased settlor, the
8 property of the deceased settlor that was subject to the power of
9 revocation at the time of the settlor's death is subject to the
10 claims of creditors of the deceased settlor's estate and to the
11 expenses of administration of the estate to the extent that the
12 deceased settlor's estate is inadequate to satisfy those claims and
13 expenses.

14 (b) The deceased settlor, by appropriate direction in the
15 trust instrument, may direct the priority of sources of payment of
16 debts among subtrusts or other gifts established by the trust at
17 the deceased settlor's death; notwithstanding the foregoing, no
18 direction by the settlor shall alter the priority of payment, from
19 whatever source, of the matters set forth in Section 11420 which
20 shall be applied to the trust as it applies to a probate estate.

21 19002. (a) Except as expressly provided in this part, this
22 part shall not be construed to affect the right of any creditor to
23 recover from any revocable trust established by the deceased
24 settlor.

1 (b) Nothing in this part shall be construed as a construction
2 or alteration of any claims procedure set forth under Part 4
3 (commencing with Section 9000) of Division 7.

4 19003. (a) At any time following the death of the deceased
5 settlor, and during the time that there has been no filing of a
6 petition to administer the estate of the deceased settlor in this
7 state of which the trustee has actual knowledge, the trustee may
8 file with the court a proposed notice to creditors. Upon the
9 court's assignment of a proceeding number to the proposed notice,
10 the trustee shall publish and serve notice to creditors of the
11 deceased settlor in the form and within the time prescribed in
12 Chapters 3 (commencing with Section 19040) and 4 (commencing with
13 Section 19050). That action shall constitute notice to creditors
14 of the requirements of this part.

15 (b) The filing shall be made with the Superior Court for the
16 county in this state where the deceased settlor resided at the time
17 of death, or if none, in any county in this state in which trust
18 property was located at the time of the deceased settlor's death,
19 or if none, in the county in this state that was the principal
20 place of administration of the trust at the time of the deceased
21 settlor's death.

22 (c) Nothing in subdivision (a) affects a notice or request to
23 a public entity required by Chapter 7 (commencing with
24 Section 19200).

25 19004. If the trustee files, publishes, and serves notice
26 as set forth in Section 19003, then:

1 (a) All claims **against the trust** shall be filed in the manner
2 and within the time provided in this part.

3 (b) A claim that is not filed as provided in this part is
4 barred from collection from trust assets.

5 (c) The holder of a claim may not maintain an action on the
6 claim against the trust unless the claim is first filed as provided
7 in this part.

8 19005. The trustee may at any time pay, reject, or contest
9 any claim against the deceased settlor or settle any claim by
10 compromise, arbitration, or otherwise. The trustee may also file
11 a petition in the manner set forth in Chapter 2 (commencing with
12 Section 19020) to settle any claim.

13 19006. (a) If a trustee of a trust established by the
14 deceased settlor files, publishes and serves notice as provided in
15 Section 19003 the protection from creditors afforded that trustee
16 and trust shall also be afforded to any other trusts established by
17 the deceased settlor and the trustees and beneficiaries of those
18 trusts.

19 (b) If the personal representative of the deceased settlor's
20 estate has published notice under Section 8120 and given notice of
21 **administration of the estate of the deceased settlor under**
22 **Chapter 2 (commencing with Section 9050) of Part 4 of Division 7,**
23 the protection from creditors afforded the personal representative
24 of the deceased settlor's estate shall be afforded to the trustee
25 and to the beneficiaries of the trust.

1 (c) In the event that, following the filing and publication
2 of the notice set forth in Section 19003, there shall be commenced
3 any proceeding under which a notice pursuant to Section 8120 is
4 required to be **published**, then the trustee shall have a right of
5 collection against that estate to recover the amount of any debts
6 paid from trust assets that would otherwise have been satisfied
7 (whether by law or by direction in the deceased settlor's will or
8 trust) by the property subject to probate proceedings.

9 19007. Nothing in this part shall determine the liability
10 of any trust established by the deceased settlor as against any
11 other trust established by that settlor, except to the extent that
12 the trustee of any such trust shall file, publish, and serve the
13 notice specified in Section 19003 and thereafter seek a
14 determination of relative liability pursuant to Chapter 2
15 (commencing with Section 19020).

16 19008. If there is no proceeding to administer the estate of
17 the deceased settlor, and if the trustee does not file a proposed
18 notice to creditors pursuant to Section 19003 and does not publish
19 notice to creditors pursuant to Chapter 3 of this part, then the
20 liability of the trust to any creditor of the deceased settlor
21 shall be as otherwise provided by law.

22 19009. Nothing in this part shall be construed to permit or
23 require disclosure of the existence of the trust or the contents of
24 any of its provisions to any creditor or beneficiary except as that
25 creditor or beneficiary may otherwise be entitled thereto.

1 19010. Nothing in this part imposes any duty on the trustee
2 to initiate the notice proceeding set forth in Section 19003, and
3 the trustee is not liable for failure to initiate such proceeding
4 under this part.

5 19011. (a) The Judicial Council may prescribe the form and
6 content of the petition, notice, claim form, and allowance or
7 rejection form to be used pursuant to this part. The allowance or
8 rejection form may be part of the claim form.

9 (b) Any claim form adopted by the Judicial Council shall
10 inform the claimant that the claim must be filed with the court and
11 a copy mailed or delivered to the trustee. The claim form shall
12 include a proof of mailing or delivery of a copy of the claim to
13 the trustee, which may be completed by the claimant.

14 19012. (a) This part applies to claims against any deceased
15 settlor who dies on or after January 1, 1991.

16 (b) The applicable law in effect before January 1, 1991,
17 continues to apply to claims against any deceased settlor who dies
18 before January 1, 1991.

1 CHAPTER 2. PETITION FOR APPROVAL AND
2 SETTLEMENT OF CLAIMS AGAINST DECEASED SETTLOR
3

4 19020. At any time after the filing and first publication
5 of notice pursuant to Chapter 3 (commencing with Section 19040),
6 and after expiration of the time to file claims provided therein,
7 a trustee or beneficiary may petition the court under this chapter
8 to approve either of the following:

9 (a) Allowance, compromise or settlement of any claims that
10 have not been rejected by the trustee under the procedure provided
11 in this part and for which trust property may be liable.

12 (b) An allocation of any amounts due by reason of an action
13 described in subdivision (a) to two or more trusts which may be
14 liable for such claims.

15 19021. The petition shall be filed in that county as may be
16 determined pursuant to Section 19003. In the event this action
17 seeks approval of allocation to two or more trusts for which the
18 notice proceeding in Section 19003 would prescribe superior courts
19 for more than one county, the court located in the county so
20 prescribed for the trustee initiating the proceeding under this
21 chapter shall have jurisdiction.

22 19022. (a) A proceeding under this chapter is commenced by
23 filing a verified petition stating facts showing that the petition
24 is authorized under this chapter and the grounds of the petition.

25 (b) The petition shall set forth a description of the trust
26 and the names of claimants with respect to which action is
27 requested and a description of each claim, together with the

1 requested determination by the court with respect to the claims,
2 provided, however, that this section does not require the filing of
3 a copy of the trust or disclosure of the beneficial interests
4 therein. That petition shall also set forth the beneficiaries of
5 the trust, those claimants whose interest in the trust may be
6 affected by the petition and the trustees of any other trust to
7 which an allocation of liability may be approved by the court
8 pursuant to the petition.

9 (c) The clerk shall set the matter for hearing.

10 19023. At least 30 days before the time set for the hearing
11 on the petition, the petitioner shall cause notice of the time and
12 place of the hearing and a copy of the petition to be served on
13 each of the claimants whose interests in the estate may be affected
14 by the petition in the manner provided in Chapter 4 (commencing
15 with Section 413.10) of Title 5 of Part 2 of the Code of Civil
16 Procedure.

17 19024. At least 30 days before the time set for the hearing
18 on the petition, the petitioner shall cause notice of the time and
19 place of hearing, together with a copy of the petition, to be
20 mailed to any of the following persons who are not petitioners:

21 (a) All trustees of the trust and of any other trusts to
22 which an allocation of liability may be approved by the court
23 pursuant to the petition.

24 (b) All beneficiaries affected.

25 (c) The personal representative of the deceased settlor's
26 estate, if any is known to the trustee.

1 (d) The Attorney General, if the petition relates to a
2 charitable trust subject to the jurisdiction of the Attorney
3 General, unless the Attorney General waives notice.

4 19025. (a) If any claimant, beneficiary, or trustee fails
5 timely to file a written pleading upon notice, then the case is at
6 issue, notwithstanding the failure; the case may proceed on the
7 petition and written statements filed by the time of the hearing,
8 and no further pleadings by other persons are necessary; such
9 claimant, beneficiary, or trustee may not participate further in
10 the proceeding for the determination requested, and such claimant,
11 beneficiary, or trustee shall be bound by the decision in the
12 proceeding.

13 (b) The court's order, when final, shall be conclusive as to
14 the liability of the trust property with respect to the claims at
15 issue in the petition. In the event of a subsequent administration
16 of the estate of the deceased settlor, that order shall be binding
17 on the personal representative of the estate of the deceased
18 settlor as well as all claimants and beneficiaries who had notice
19 of the petition.

20 19026. The court may dismiss a petition if it appears that
21 the proceeding is not reasonably necessary for the protection of
22 the interests of the trustee or any beneficiary of the trust.

23 19027. (a) The court in its discretion may make any orders
24 and take any other action necessary or proper to dispose of the
25 matters presented by the petition.

1 (b) If the court determines that the assets of the trust
2 estate are insufficient to pay all debts, then the court shall
3 order payment in the manner specified by Section 11420.

4 19028. An appeal may be taken from the grant or denial of
5 any final order made under this chapter.

6 19029. The court may, on its own motion or on request of a
7 trustee or other person interested in the trust, appoint a guardian
8 ad litem in accordance with Section 17208.

9 19030. In a case involving a charitable trust subject to
10 the jurisdiction of the Attorney General, the Attorney General may
11 petition under this chapter.

1 CHAPTER 3. PUBLICATION OF NOTICE

2 19040. (a) Publication of notice pursuant to this section
3 shall be for at least 15 days. Three publications in a newspaper
4 published once a week or more often, with at least five days
5 intervening between the first and last publication dates, not
6 counting such publication dates, are sufficient. Notice shall be
7 published in a newspaper of general circulation in the city in this
8 state where the deceased settlor resided at the time of death, or
9 if none, in the county in this state wherein trust property was
10 located at the time of the deceased settlor's death, or if none, in
11 the city in this state wherein the principal place of
12 administration of the trust was located at the time of the deceased
13 settlor's death. If there is no such newspaper published in the
14 applicable city or county, notice shall be published in a newspaper
15 of general circulation published in this state nearest to the
16 applicable city or county seat, and which is circulated within the
17 applicable city or county. If there is no such newspaper, notice
18 shall be given in written or printed form, posted at three of the
19 most public places within such community. For purposes of this
20 section, "city" means a charter city as defined in Section 34101 of
21 the Government Code or a general law city as defined in
22 Section 34102 of the Government Code.

23 (b) The caption of the notice, the deceased settlor's name,
24 and the name of the trustee shall be in at least 8-point type, the
25 text of the notice shall be in at least 7-point type, and the
26 notice shall state substantially as follows:

1 NOTICE TO CREDITORS

2 OF _____

3 # _____

4 SUPERIOR COURT OF CALIFORNIA

5 COUNTY OF _____

6
7 Notice is hereby given to the creditors and
8 contingent creditors of the above-named
9 decedent, that all persons having claims
10 against the decedent are required to file them
11 with the Superior Court, at _____
12 _____, and mail a copy to _____
13 _____, as trustee of the trust
14 dated _____ wherein the decedent
15 was the settlor, at _____
16 _____, within the later of four months
17 after _____ (the date of the
18 first publication of notice to creditors) or,
19 if notice is mailed or personally delivered to
20 you, 30 days after the date this notice is
21 mailed or personally delivered to you. A
22 claim form may be obtained from the court
23 clerk. For your protection, you are
24 encouraged to file your claim by certified
25 mail, with return receipt requested.
26
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28
29
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31

32 _____
33 (name of trustee or attorney)

34 (c) An affidavit showing due publication of notice shall be
35 filed with the clerk upon completion of the publication. The
36 affidavit shall contain a copy of the notice, and state the date of
37 its first publication.

38 19041. The Legislature finds and declares that to be most
39 effective, notice to creditors should be published in compliance
40 with the procedures specified in Section 19040. However, the
41 Legislature recognizes the possibility that in unusual cases due to
42 confusion over jurisdictional boundaries or oversights such notice

1 may inadvertently be published in a newspaper which does not meet
2 these requirements. Therefore, to prevent a minor error in
3 publication from invalidating what would otherwise be a proper
4 proceeding, the Legislature further finds and declares that notice
5 published in a good faith attempt to comply with Section 19040
6 shall be sufficient to provide notice to creditors and establish
7 jurisdiction if the court expressly finds that such notice was
8 published in a newspaper of general circulation published within
9 the county and widely circulated within a true cross section of the
10 community in which the deceased settlor resided or wherein the
11 principal place of administration of the trust was located or the
12 property was located in substantial compliance with Section 19040.

1 CHAPTER 4. ACTUAL NOTICE TO CREDITORS

2 19050. (a) If the trustee has knowledge of a creditor of the
3 deceased settlor, the trustee shall give notice to the creditor,
4 unless notice is not required pursuant to Section 19054. The
5 notice shall be given as provided in Section 1215. For the purpose
6 of this subdivision, a trustee has knowledge of a creditor of the
7 deceased settlor if the trustee is aware that the creditor has
8 demanded payment from the deceased settlor or the trust estate.

9 (b) The giving of notice under this chapter is in addition to
10 the publication of notice under Section 19040.

11 19051. (a) Except as provided in subdivision (b), the notice
12 shall be given within four months after the first publication of
13 notice under Section 19040.

14 (b) If the trustee first has knowledge of a creditor less
15 than 30 days before expiration of the time provided in
16 subdivision (a), the notice shall be given within 30 days after the
17 trustee first has knowledge of the creditor.

1 19052. The notice shall be in substantially the following
2 form:

3 NOTICE TO CREDITORS

4 OF _____

5 # _____

6 SUPERIOR COURT OF CALIFORNIA

7 COUNTY OF _____

8 Notice is hereby given to the creditors and
9 contingent creditors of the above-named
10 decedent, that all persons having claims
11 against the decedent are required to file them
12 with the Superior Court, at _____
13 _____, and mail or deliver a
14 copy to _____, as trustee
15 of the trust dated _____ wherein
16 the decedent was the settlor, at _____
17 _____, within the later of
18 four months after _____ (the
19 date of the first publication of notice to
20 creditors) or, if notice is mailed or
21 personally delivered to you, 30 days after the
22 date this notice is mailed or personally
23 delivered to you. A claim form may be
24 obtained from the court clerk. For your
25 protection, you are encouraged to file your
26 claim by certified mail, with return receipt
27 requested.
28
29
30
31
32
33

34 _____
35 (Date of mailing
36 this notice if
37 applicable)

34 _____
35 (name of trustee or attorney)

38 19053. (a) If the trustee believes that notice to a
39 particular creditor is or may be required by this chapter and gives
40 notice based on that belief, the trustee is not liable to any
41 person for giving the notice, whether or not required by this
42 chapter.

1 (b) If the trustee fails to give notice required by this
2 chapter, the trustee is not liable to any person for the failure,
3 unless a creditor establishes all of the following:

4 (1) The failure was in bad faith.

5 (2) Neither the creditor nor the attorney representing the
6 creditor in the matter had actual knowledge of the proceedings
7 under Chapter 1 (commencing with Section 19000) sooner than one
8 year after publication of notice to creditors under Section 19040,
9 and payment would have been made on the creditor's claim if the
10 claim had been properly filed.

11 (3) Within 16 months after the first publication of notice
12 under Section 19040, the creditor did both of the following:

13 (A) Filed a petition requesting that the court in which the
14 proceedings under Chapter 1 (commencing with Section 19000) were
15 initiated make an order determining the liability of the trustee
16 under this subdivision.

17 (B) At least 30 days before the hearing on the petition,
18 caused notice of the hearing and a copy of the petition to be
19 served on the trustee in the manner provided in Chapter 4
20 (commencing with Section 413.10) of Title 5 of Part 2 of the Code
21 of Civil Procedure.

22 (c) Nothing in this section affects the liability of the
23 trust estate, if any, for the claim of a creditor, and the trustee
24 is not liable to the extent it is paid out of the trust estate.

25 (d) Nothing in this chapter imposes a duty on the trustee to
26 make a search for creditors of the deceased settlor.

1 19054. Notwithstanding Section 19050, the trustee need not
2 give notice to a creditor even though the trustee has knowledge of
3 the creditor if either of the following conditions is satisfied:
4 (a) The creditor has filed a claim as provided in this part.
5 (b) The creditor has demanded payment and the trustee elects
6 to treat the demand as a claim under Section 19153.

1 CHAPTER 5. TIME FOR FILING CLAIMS

2
3 19100. (a) A claimant shall file a claim before expiration
4 of the later of the following times:

5 (1) Four months after the first publication of notice to
6 creditors under Section 19040.

7 (2) Thirty days after the date actual notice is mailed or
8 personally delivered to the creditor, if notice is given within the
9 time provided in Section 19051.

10 (b) Notwithstanding Section 19103, a reference in another
11 statute to the time for filing a claim means the time provided in
12 this Section, unless the provision or context requires otherwise.

13 19101. A vacancy in the office of the trustee that occurs
14 before expiration of the time for filing a claim does not extend
15 the time.

16 19102. A claim that is filed before expiration of the time
17 for filing the claim is timely even if acted on by the trustee or
18 the court after expiration of the time.

19 19103. (a) Upon petition by a claimant and upon giving
20 notice of hearing in the manner and to the persons set forth in
21 Section 19024, the court may allow a claim to be filed after
22 expiration of the time provided in Section 19100 if it appears by
23 clear and convincing evidence that either of the following
24 conditions are satisfied:

25 (1) Neither the claimant nor the attorney representing the
26 claimant in the matter had actual knowledge of the proceeding under

1 this part more than 15 days before expiration of the time provided
2 in Section 19100, and the claimant's petition was filed within 30
3 days after either the claimant or the claimant's attorney had
4 actual knowledge of the proceeding whichever occurred first.

5 (2) Neither the claimant nor the attorney representing the
6 claimant in the matter had knowledge of the existence of the claim
7 more than 15 days before expiration of the time provided in
8 Section 19100 and the claimant's petition was filed within 30 days
9 after either the claimant or the claimant's attorney had knowledge
10 of the existence of the claim whichever occurred first.

11 (b) The court shall not allow a claim to be filed under this
12 section more than one year after the date of first publication of
13 notice to creditors under Section 19040. Nothing in this paragraph
14 authorizes allowance or approval of a claim barred by, or extends
15 the time provided in, Section 353 of the Code of Civil Procedure.

16 (c) The court may condition the claim on terms that are just
17 and equitable. The court may deny the claimant's petition if a
18 payment to general creditors has been made and it appears the
19 filing or establishment of the claim would cause or tend to cause
20 unequal treatment among beneficiaries or creditors.

21 (d) Regardless of whether the claim is later established in
22 whole or in part, property distributed under the terms of the trust
23 subsequent to an order settling claims under Chapter 2 (commencing
24 with Section 19020) and payments otherwise properly made before a
25 claim is filed under this section are not subject to the claim and

1 the distributee is not liable on account of the prior distribution
2 or payment except to the extent provided in Section 19401.

3 19104. (a) Subject to subdivision (b), if a claim is filed
4 within the time provided in this chapter, the claimant may later
5 amend or revise the claim. The amendment or revision shall be
6 filed in the same manner as the claim.

7 (b) An amendment or revision may not be made to increase the
8 amount of the claim after the time for filing a claim has expired.
9 An amendment or revision to specify the amount of a claim that, at
10 the time of filing, was not due, was contingent, or was not yet
11 ascertainable, is not an increase in the amount of the claim within
12 the meaning of this subdivision. An amendment or revision of a
13 claim may not be made for any purpose after the earlier of the
14 following times:

15 (1) The time the court makes an order approving settlement of
16 the claim against the deceased settlor under Chapter 2 (commencing
17 with Section 19020).

18 (2) One year after the date of first publication of notice to
19 creditors under Section 19040. Nothing in this paragraph
20 authorizes allowance or approval of a claim barred by, or extends
21 the time provided in, Section 353 of the Code of Civil Procedure.

1 CHAPTER 6. FILING OF CLAIMS

2
3 19150. (a) A claim may be filed by the claimant or a person
4 acting on behalf of the claimant.

5 (b) A claim shall be filed with the court and a copy shall be
6 mailed to the trustee. Failure to mail a copy to the trustee does
7 not invalidate a properly filed claim, but any loss that results
8 from the failure shall be borne by the claimant.

9 19151. (a) A claim shall be supported by the affidavit of
10 the claimant or the person on behalf of the claimant stating:

11 (1) The claim is a just claim.

12 (2) If the claim is due, the facts supporting the claim, the
13 amount of the claim, and that all payments on and offsets to the
14 claim have been credited.

15 (3) If the claim is not due or contingent, or the amount is
16 not yet ascertainable, the facts supporting the claim.

17 (4) If the affidavit is made by a person other than the
18 claimant, the reason it is not made by the claimant.

19 (b) The trustee may require satisfactory vouchers or proof to
20 be produced to support the claim. An original voucher may be
21 withdrawn after a copy is provided. If a copy is provided, the
22 copy shall be attached to the claim.

23 19152. (a) If a claim is based on a written instrument,
24 either the original or a copy of the original with all endorsements
25 shall be attached to the claim. If a copy is attached, the
26 original instrument shall be exhibited to the trustee on demand

1 unless it is lost or destroyed, in which case the fact that it is
2 lost or destroyed shall be stated in the claim.

3 (b) If the claim or a part of the claim is secured by a
4 mortgage, deed of trust, or other lien that is recorded in the
5 office of the recorder of the county in which the property subject
6 to the lien is located, it is sufficient to describe the mortgage,
7 deed of trust, or lien and the recording reference for the
8 instrument that created the mortgage, deed of trust, or other lien.

9 19153. (a) Notwithstanding any other provision of this part,
10 if a claimant makes a written demand for payment within the time
11 specified in Section 19100, the trustee may waive formal defects
12 and elect to treat the demand as a claim that is filed and
13 established under this part by paying the amount demanded.

14 (b) Nothing in this section limits application of (1) the
15 doctrines of waiver, estoppel, laches, or detrimental reliance or
16 (2) any other equitable principle.

1 CHAPTER 7. CLAIMS BY PUBLIC ENTITIES
2

3 19200. (a) Except as provided in this chapter, a claim by a
4 public entity shall be filed within the time otherwise provided in
5 this part. A claim not so filed is barred, including any lien
6 imposed for the claim.

7 (b) As used in this chapter, "public entity" has the meaning
8 provided in Section 811.2 of the Government Code, and includes an
9 officer authorized to act on behalf of the public entity.

10 19201. (a) Notwithstanding any other statute, if a claim of
11 a public entity arises under a law, act, or code listed in
12 subdivision (b):

13 (1) The public entity may provide a form to be used for the
14 written notice or request to the public entity required by this
15 chapter. Where appropriate, the form may require the decedent's
16 social security number, if known.

17 (2) The claim is barred only after written notice or request
18 to the public entity and expiration of the period provided in the
19 applicable section. If no written notice or request is made, the
20 claim is enforceable by the remedies, and is barred at the time,
21 otherwise provided in the law, act, or code.

<u>(b) Law, Act or Code</u>	<u>Applicable Section</u>
Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Bradley-Burns Uniform Local Sale and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
Use Fuel License Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code
Unemployment Insurance Code	Section 1090 of the Unemployment Insurance
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9202 of the Section Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9202 of the Probate Code

1 19202. (a) If the Trustee knows or has reason to believe
2 that the deceased settlor received health care under the provisions
3 of Chapter 7 (commencing with Section 14000) or Chapter 8
4 (commencing with Section 14200) of Part 3 of Division 9 of the
5 Welfare and Institutions Code, the trustee shall give the Director
6 of Health Services notice of the deceased settlor's death in the
7 manner provided in Section 215.

8 (b) The director has four months after notice is given in
9 which to file a claim.

10 19203. If property in the trust is distributed before
11 expiration of the time allowed a public entity to file a claim, the
12 public entity has a claim against the distributees to the full
13 extent of the public entity's claim or each distributee's share of
14 the distributed property (as set forth in Section 19402), whichever
15 is less. The public entity's claim against distributees includes
16 interest at a rate equal to that earned in the Pooled Money
17 Investment Account, Article 4.5 (commencing with Section 16480) of
18 Chapter 3 of Part 2 of Division 4 of Title 2 of the Government
19 Code, from the date of distribution or the date of filing the claim
20 by the public entity, whichever is later, plus other accruing costs
21 as in the case of enforcement of a money judgment.

22 19204. Nothing in this chapter shall be construed to affect
23 the order of priority of debts provided for under other provisions
24 of law.

25 19205. This chapter does not apply to liability for the
26 restitution of amounts illegally acquired through the means of a

- 1 fraudulent, false, or incorrect representation, or a forged or
- 2 unauthorized endorsement.

1 **CHAPTER 8. ALLOWANCE AND REJECTION OF CLAIMS**

2
3 19250. When a claim is filed, the trustee shall allow or
4 reject the claim in whole or in part.

5 19251. (a) Any allowance or rejection shall be in writing.
6 The trustee shall file the allowance or rejection with the court
7 clerk and give notice to the claimant, together with a copy of the
8 allowance or rejection, as provided in Section 1215.

9 (b) The allowance or rejection shall contain the following
10 information:

11 (1) The name of the claimant.

12 (2) The date of the deceased settlor's death.

13 (3) The total amount of the claim.

14 (4) The amount allowed or rejected by the trustee.

15 (5) A statement that the claimant has 90 days from the time
16 the notice of rejection is given, or 90 days after the claim
17 becomes due, whichever is later, in which to bring an action on a
18 claim rejected in whole or in part.

19 19252. The trustee shall have the power to pay any claim or
20 portion thereof; any payment shall constitute allowance of the
21 claim to the extent of the payment. The trustee shall have the
22 power to compromise any claim or portion thereof. If the trustee
23 or the attorney for the trustee is a claimant of the deceased
24 settlor, the trustee shall have the same powers regarding
25 allowance, rejection, payment or compromise set forth in this
26 chapter.

1 19253. (a) A claim barred by the statute of limitations may
2 not be allowed by the trustee.

3 (b) The filing of a claim tolls the statute of limitations
4 otherwise applicable to the claim until the trustee gives notice of
5 allowance or rejection.

6 (c) The allowance of a claim further tolls the statute of
7 limitations as to the part of the claim allowed until the allowed
8 portion of the claim is paid.

9 (d) Notwithstanding the statute of limitations otherwise
10 applicable to a claim, if an action on a rejected claim is not
11 commenced or if the matter is not referred to a referee or to
12 arbitration within the time prescribed in Section 19255, it is
13 forever barred.

14 19254. If within 30 days after a claim is filed the trustee
15 has refused or neglected to act on the claim, the refusal or
16 neglect may, at the option of the claimant, be deemed equivalent to
17 the giving of a notice of rejection on the 30th day.

18 19255. (a) A rejected claim is barred as to the part
19 rejected unless the claimant brings an action on the claim or the
20 matter is referred to a referee or to arbitration within the
21 following times, excluding any time during which there is a vacancy
22 in the office of the trustee.

23 (1) If the claim is due at the time of giving the notice of
24 rejection, 90 days after the notice is given.

25 (2) If the claim is not due at the time of giving the notice
26 of rejection, 90 days after the claim becomes due.

1 (b) In addition to any other county in which an action on a
2 rejected claim may be commenced, such an action may be commenced in
3 the county wherein the principal place of administration of the
4 trust is located.

5 (c) The claimant shall file a notice of the pendency of the
6 action or the referral to a referee or to arbitration with the
7 court clerk in the trust proceeding, together with proof of giving
8 a copy of the notice to the trustee as provided in Section 1215.
9 Personal service of a copy of the summons and complaint on the
10 trustee is equivalent to the filing and giving of the notice.

11 (d) Any property distributed by the trustee under the terms
12 of the trust after 120 days from the later of the time the notice
13 of rejection is given or the claim is due and before the notice of
14 pendency of action or referral or arbitration is filed and given is
15 not subject to the claim. Neither the trustee nor the distributee
16 is liable on account of such distribution.

17 (e) The prevailing party in the action shall be awarded court
18 costs and, if the court determines that the prosecution or defense
19 of the action against the prevailing party was unreasonable, the
20 prevailing party shall be awarded reasonable litigation expenses,
21 including attorney's fees. For the purpose of this paragraph, the
22 prevailing party shall be the trustee if the creditor recovers an
23 amount equal to or less than the amount of the claim allowed by the
24 trustee, and shall be the creditor if the creditor recovers an
25 amount greater than the amount of the claim allowed by the trustee.

1 CHAPTER 9. CLAIMS ESTABLISHED BY JUDGMENT

2 19300. (a) Except as provided in Section 19303, after the
3 death of the deceased settlor all money judgments against the
4 deceased settlor on a claim against the deceased settlor are
5 payable in the course of administration and are not enforceable
6 against property in the trust estate of the deceased settlor under
7 the Enforcement of Judgments Law.

8 (b) Subject to Section 19301, a judgment referred to in
9 subdivision (a) shall be filed in the same manner as other claims.

10 19301. When a money judgment against a trustee in a
11 representative capacity becomes final, it conclusively establishes
12 the validity of the claim for the amount of the judgment. The
13 judgment shall provide that it is payable out of property in the
14 deceased settlor's trust estate in the course of administration.
15 An abstract of the judgment shall be filed in the trust
16 administration proceedings.

17 19302. (a) Notwithstanding the death of the deceased
18 settlor, a judgment for possession of trust property or a judgment
19 for sale of trust property may be enforced under the Enforcement of
20 Judgments Law. Nothing in this subdivision authorizes enforcement
21 under the Enforcement of Judgments Law against any property in the
22 trust estate of the deceased settlor other than the property
23 described in the judgment for possession or sale.

24 (b) After the death of the deceased settlor, a demand for
25 money that is not satisfied from the trust property described in a
26 judgment for sale of property shall be filed as a claim in the same

1 manner as other claims and is payable in the course of
2 administration.

3 19303. If trust property of the deceased settlor is subject
4 to an execution lien at the time of the deceased settlor's death,
5 enforcement against the property may proceed under the Enforcement
6 of Judgments Law to satisfy the judgment. The levying officer
7 shall account to the trustee for any surplus. If the judgment is
8 not satisfied, the balance of the judgment remaining unsatisfied is
9 payable in the course of administration.

10 19304. (a) An attachment lien may be converted into a
11 judgment lien on property in the trust estate subject to the
12 attachment lien, with the same priority as the attachment lien, in
13 either of the following cases:

14 (1) Where the judgment debtor dies after entry of judgment in
15 an action in which the property was attached.

16 (2) Where a judgment is entered after the death of the
17 defendant in an action in which the property was attached.

18 (b) To convert the attachment lien into a judgment lien, the
19 levying officer shall, after entry of judgment in the action in
20 which the property was attached and before the expiration of the
21 attachment lien, do one of the following:

22 (1) Serve an abstract of the judgment, and a notice that the
23 attachment lien has become a judgment lien, on the trustee or other
24 person holding property subject to the attachment lien.

25 (2) Record or file in any office where the writ of attachment
26 and notice of attachment are recorded or filed an abstract of the

1 judgment and a notice that the attachment lien has become a
2 judgment lien. If the attached property is real property, the
3 plaintiff or the plaintiff's attorney may record the required
4 abstract and notice with the same effect as if recorded by the
5 levying officer.

6 (c) After the death of the deceased settlor, any members of
7 the deceased settlor's family who were supported in whole or in
8 part by the deceased settlor may claim an exemption provided in
9 Section 487.020 of the Code of Civil Procedure for property levied
10 on under the writ of attachment if the right to the exemption
11 exists at the time the exemption is claimed. The trustee may claim
12 the exemption on behalf of members of the deceased settlor's
13 family. The claim of exemption may be made at any time before the
14 time the abstract and notice are served, recorded, or filed under
15 subdivision (b) with respect to the property claimed to be exempt.
16 The claim of exemption shall be made in the same manner as an
17 exemption is claimed under Section 462.100 of the Code of Civil
18 Procedure.

1 CHAPTER 10. ALLOCATION OF DEBTS BETWEEN
2 TRUST AND SURVIVING SPOUSE
3
4

5 19320. If it appears that a debt of the deceased settlor
6 has been paid or is payable in whole or in part by the surviving
7 spouse, or that a debt of the surviving spouse has been paid or is
8 payable in whole or in part from property in the deceased settlor's
9 trust, then the trustee, the surviving spouse, the personal
10 representative, if any, of a deceased settlor's probate estate, or
11 a beneficiary may, petition for an order to allocate the debt.

12 19321. A petition under Section 19320 shall include a
13 statement of all of the following:

14 (a) All debts of the deceased settlor and surviving spouse
15 known to the petitioner that are alleged to be subject to
16 allocation and whether paid in whole or in part or unpaid.

17 (b) The reason why the debts should be allocated.

18 (c) The proposed allocation and the basis for allocation
19 alleged by the petitioner.

20 19322. If it appears from the petition under Section 19320
21 that allocation would be affected by the value of the separate
22 property of the surviving spouse and any community property and
23 quasi-community property not administered in the trust, and if an
24 inventory and appraisal of the property has not been provided by
25 the surviving spouse, the court shall make an order to show cause
26 why the information should not be provided.

27 19323. (a) At least 30 days before the time set for the
28 hearing on the petition, the petitioner shall cause notice of the

1 time and place of the hearing and a copy of the petition to be
2 served on the surviving spouse in the manner provided in Chapter 4
3 (commencing with Section 413.10) of Title 5 of Part 2 of the Code
4 of Civil Procedure.

5 (b) At least 30 days before the time set for the hearing on
6 the petition, the petitioner shall cause notice of the time and
7 place of hearing, together with a copy of the petition, to be
8 mailed to any of the following persons who are not petitioners:

9 (A) All trustees of the trust and of any trusts to which an
10 allocation of liability may be approved by the court pursuant to
11 the petition.

12 (B) All beneficiaries affected.

13 (C) The personal representative of the deceased settlor's
14 estate, if any is known to the trustee.

15 (D) The Attorney General, if the petition relates to a
16 charitable trust subject to the jurisdiction of the Attorney
17 General, unless the Attorney General waives notice.

18 19324. (a) The trustee, the personal representative, if any,
19 of a deceased settlor's probate estate, and the surviving spouse
20 may provide for allocation of debts by agreement so long as the
21 agreement substantially protects the rights of other interested
22 persons. The trustee, the personal representative, or the spouse
23 may request and obtain court approval of the allocation provided in
24 the agreement.

25 (b) In the absence of an agreement, each debt of the deceased
26 settlor shall be apportioned based on all of the property of the

1 spouses liable for the debt at the date of death that is not exempt
2 from enforcement of a money judgment, in the proportion determined
3 by the value of the property less any liens and encumbrances at the
4 date of death, adjusted to take into account any right of
5 reimbursement that would have been available if the property were
6 applied to the debt at the date of death, and the debt shall be
7 allocated accordingly.

8 19325. On making a determination as provided in this
9 chapter, the court shall make an order that:

10 (a) Directs the trustee to make payment of the amounts
11 allocated to the trust by payment to the surviving spouse or
12 creditors.

13 (b) Directs the trustee to charge amounts allocated to the
14 surviving spouse against any property or interests of the surviving
15 spouse that are in the possession or control of the trustee. To
16 the extent that property or interests of the surviving spouse in
17 the possession or control of the trustee are insufficient to
18 satisfy the allocation, the court order shall summarily direct the
19 surviving spouse to pay the allocation to the trustee.

20 19326. Notwithstanding any other statute, funeral expenses
21 and expenses of last illness, in the absence of specific provisions
22 in a will or trust to the contrary, shall be charged against the
23 deceased settlor's probate estate and thereafter against the
24 deceased settlor's share of the trust and shall not be allocated to
25 or charged against, the community share of the surviving spouse,
26 whether or not the surviving spouse is financially able to pay the

1 expenses and whether or not the surviving spouse or any other
2 person is also liable for the expenses.

1 CHAPTER 11. LIABILITY OF SETTLOR'S SURVIVING
2 SPOUSE
3

4 19330. If proceedings are commenced under this part for the
5 settlement of claims against the trust, and the time for filing
6 claims has commenced, any action upon the liability of the
7 surviving spouse under Chapter 3 (commencing with Section 13550) is
8 barred to the same extent as provided for claims under this part,
9 except as to the following:

10 (a) Any creditor who commences judicial proceedings to
11 enforce a claim and serves the surviving spouse with the complaint
12 therein prior to the expiration of the time for filing claims.

13 (b) Any creditor who has or who secures the surviving
14 spouse's acknowledgment in writing of the liability of the
15 surviving spouse for the claim.

16 (c) Any creditor who files a timely claim in the proceedings
17 for the administration of the estate of the deceased spouse.
18

1 CHAPTER 12

2 DISTRIBUTE LIABILITY

3 19400. Subject to the provisions of Section 353 of the Code
4 of Civil Procedure, if there is no proceeding to administer the
5 estate of the deceased settlor, and if the trustee does not file a
6 proposed notice to creditors pursuant to Section 19003 and does not
7 publish notice to creditors pursuant to Chapter 3 of this part,
8 then a beneficiary of the trust to whom payment, delivery, or
9 transfer of the deceased settlor's property is made pursuant to the
10 terms of the trust is personally liable, to the extent provided in
11 Section 19402, for the unsecured claims of the creditors of the
12 deceased settlor's estate.

13 19401. Subject to Section 19402, if the trustee filed a
14 proposed notice to creditors pursuant to Section 19003 and
15 published notice to creditors pursuant to Section 19040, and if the
16 identity of the creditor was known to, or reasonably ascertainable
17 by, the trustee within four months of the first publication of
18 notice pursuant to Section 19040, then a person to whom property is
19 distributed is personally liable for the claim of the creditor,
20 without a claim first having been filed, if all of the following
21 conditions are satisfied:

22 (a) The claim of the creditor was not merely conjectural.

23 (b) Notice to the creditor was not given to the creditor
24 under Chapter 4 (commencing with Section 19050) and neither the
25 creditor nor the attorney representing the creditor in the matter
26 had actual knowledge of the administration of the trust estate

1 sooner than one year after the date of first publication of notice
2 pursuant to Section 19040.

3 (c) The statute of limitations applicable to the claim under
4 Section 353 of the Code of Civil Procedure has not expired at the
5 time of commencement of an action under this section.

6 19402. (a) In any action under this chapter, subject to the
7 provisions of Section 353 of the Code of Civil Procedure, the
8 distributee may assert any defenses, cross-complaints, or setoffs
9 that would have been available to the deceased settlor if the
10 deceased settlor had not died.

11 (b) Personal liability under this chapter is applicable only
12 to the extent the claim of the creditor cannot be satisfied out of
13 the trust estate of the deceased settlor and is limited to a pro
14 rata portion of the claim of the creditor, based on the proportion
15 that the value of the property distributed to the person out of the
16 trust estate bears to the total value of all property distributed
17 to all persons out of the trust estate. Personal liability under
18 this chapter for all claims of all creditors shall not exceed the
19 value of the property distributed to the person out of the trust
20 estate. As used in this chapter, the value of the property is the
21 fair market value of the property on the date of its distribution,
22 less the amount of any liens and encumbrances on the property at
23 that time.

24 19403. Nothing in this chapter affects the rights of a
25 purchaser or encumbrancer of property in good faith and for value
26 from a person who is personally liable under this section.