Memorandum 90-108

Subject: Study L-3007 - In-Law Inheritance (AB 2589)

Assembly Bill 2589 repeals Probate Code Section 6402.5, the in-law inheritance statute. This statute provides that the heirs of a predeceased spouse take the property the decedent acquired from the predeceased spouse if the decedent dies intestate without a surviving spouse or issue. California is the only state that still has such a statute. Six other states that once had similar statutes have repealed them.

The Commission recommended the repeal of Section 6402.5 because the Commission concluded that any possible benefits resulting from applying a special rule of in-law inheritance are clearly outweighed by the additional expense and delay the statute causes in probate proceedings and by the inequitable results that sometimes occur under the statute. Other recently enacted legislation covers those situations where recognition of the equities calls for inheritance by relatives of a predeceased spouse. In addition, the interpretation and application of the complex and lengthy in-law inheritance statute presents difficult problems, some of which have not been resolved. The bill is explained in some detail in the attached Commission recommendation.

Assembly Bill 2589 is supported by California Association of Public Administrators, Public Guardians and Public Conservators. Neither the State Bar Estate Planning, Trust and Probate Law Section nor any local bar association committee or subcommittee has a position on the bill. The bill passed the Assembly but was defeated by a 5-4 vote in the Senate Judiciary Committee on June 19. The bill was opposed at the hearing by various heir tracers (American Archives Association; Brandenberger & Davis; American Research Bureau; W.C. Cox & Company). The heir tracers stand to lose a lot of business if the bill is enacted. Although the section applies only where a decedent dies intestate without a spouse or surviving issue, this does not avoid

the need to give notice to relatives of the predeceased spouse if the decedent left a will. This is because the relatives of the predeceased spouse may contest the will, and they are entitled to notice of the probate proceeding so they can exercise this right. Accordingly, even where there is a will, the estate must bear the expense of searching for the relatives of the predeceased spouse, even though the relatives will take nothing. Some attorneys advised the Commission that although notice was required in some of the cases they handled, they had yet to see a case where a relative of the predeceased spouse took anything.

The Senate Judiciary Committee has voted on July 3 to reconsider the vote which defeated Assembly Bill 2589. It is the understanding of the Commission's staff that the Senate Judiciary Committee will set the bill for rehearing on August 7 if the bill can be revised to satisfy Senator Lockyer, Chairman of the Senate Judiciary Committee.

Senator Lockyer had indicated that he is unwilling to repeal the in-law inheritance statute. At the hearing, he stated that he might be willing to consider some exception for small estates. I have not previously brought this to the attention of the Commission because there was nothing specific for the Commission to consider. However, I have been advised that Senator Lockyer might be willing to limit the application of the bill by excluding real property not exceeding $250,000 (gross value, not decedent's equity). The heir tracers no doubt would oppose the bill if this exclusion were added. The question is whether the Commission wishes to adopt this approach or wishes to abandon the bill.

The Commission has made what the staff considers a sound recommendation. However, we expect that a bill introduced in 1991 to effectuate the same recommendation will suffer the same fate as the bill this session. Lacking the support from state and local bar probate sections, we doubt that we can defeat the efforts of the heir tracers who will strongly oppose the bill.

The issue for decision is what further action, if any, the Commission should take with respect to Section 6402.5. It would be a major undertaking which would require much staff and Commission time to revise Section 6402.5 to deal with all the problems the section presents. The subject is controversial, and the state and local bar

sections have not wished to take a position on the issue. The staff believes that our time and resources can better be devoted to other projects.

The staff recommends that the Commission follow up on the approach that may be acceptable to Senator Lockyer. Specifically, the staff recommends that we revise Assembly Bill 2589 to exclude real property not exceeding $250,000 from the application of the section. We also would make clear that the section does not apply to property sought to be taken or taken pursuant to the procedure for disposition of a small estate without administration (estate not exceeding $60,000). For an amendment of Section 6402.5 to effectuate the staff recommendations, see Exhibit 1 (attached). If the Commission decides that it wishes to take this approach, hopefully, Senator Lockyer will be willing to approve the bill as thus revised. If he is not, we would drop the bill and the Commission can determine at a future time what further action, if any, it will take concerning this matter.

Even if legislation is enacted this session, the Commission also may want to devote a small amount of staff and Commission time next year to a review of the Probate Code section with a view to limiting the application of the section by correcting a few obvious defects. The bill to correct these obvious defects would be considered at the 1991 legislative session or at a subsequent session.

Respectfully submitted,

John H. DeMoully
Executive Secretary

AMENDMENT OF SECTION 6402.5

6402.5. (a) For purposes of distributing real property under this section if the decedent had a predeceased spouse who died not more than 15 years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(b) For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or

issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:

(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.

(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.

(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.

(c) For purposes of disposing of personal property under subdivision (b), the claimant heir bears the burden of proof to show the exact personal property to be disposed of to the heir.

(d) For purposes of providing notice under any provision of this code with respect to an estate that may include real property subject to distribution under subdivision (a), if the aggregate fair market value of the real property in the estate is believed in good faith by the petitioning party to be less than two hundred fifty thousand dollars ($250,000), the petitioning party need not give notice to the

issue or next of kin of the predeceased spouse. If the real property is subsequently determined to have an aggregate fair market value in excess of two hundred fifty thousand dollars ($250,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law. For purposes of providing notice under any provision of this code with respect to an estate that may include personal property subject to distribution under subdivision (b), if the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate is believed in good faith by the petitioning party to be less than ten thousand dollars ($10,000), the petitioning party need not give notice to the issue or next of kin of the predeceased spouse. If the personal property is subsequently determined to have an aggregate fair market value in excess of ten thousand dollars ($10,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law.

(e) For the purposes of disposing of property pursuant to subdivision (a), "real property" means real property the value of which in the aggregate is two hundred fifty thousand dollars ($250,000) or more. For the purposes of disposing of property pursuant to subdivision (b), "personal property" means that personal property in which there is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more.

(f) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:

(1) One-half of the community property in existence at the time of the death of the predeceased spouse.

(2) One-half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.

(3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(4) Any separate property of the predeceased spouse which came to

the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

(g) For the purposes of this section, quasi-community property shall be treated the same as community property.

(h) For the purposes of this section:

(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.

(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.

(i) This section does not apply to any of the following:

(1) Particular personal property of the decedent which is sought to be or has been collected, received, or transferred by the successor of the decedent under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8.

(2) Particular real property of the decedent for which the successor of the decedent seeks or has obtained a court order determining succession under Chapter 4 (commencing with Section 13150) of Part 1 of Division 8 or with respect to which the successor of the decedent files an affidavit of succession under Chapter 5 (commencing with Section 13200) of Part 1 of Division 8.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Repeal of Probate Code Section 6402.5 (In-Law Inheritance)

December 1989

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

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Repeal of Probate Code Section 6402.5 (In-Law Inheritance)*, 20 Cal. L. Revision Comm'n Reports 571 (1990).

STATE OF CALIFORNIA GEORGE DEUKMEJIAN, Governor

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December 1, 1989

To: The Honorable George Deukmejian
Governor of California, and
The Legislature of California

This recommendation proposes the repeal of Probate Code Section 6402.5, the so-called in-law inheritance statute. Section 6402.5 is a provision that in some cases requires the estate of an intestate decedent to be divided into two parts, with the part attributable to a predeceased spouse of the decedent to pass to heirs of the predeceased spouse ("in-law inheritance") and the part not so attributable to pass to the decedent's heirs under ordinary rules of intestate succession.

This recommendation renews a recommendation the Commission made in 1982. The 1982 recommendation to repeal the in-law inheritance statute was included in a bill proposing a comprehensive revision of the law relating to wills and intestate succession. The bill was heard by the Senate Judiciary Committee on the last day for committee consideration of bills. At that time, a representative of a Sacramento heir-tracing firm objected to the repeal. In order to permit enactment of the comprehensive revision of the wills and intestate succession law, the author of the bill amended the bill to retain a limited form of in-law inheritance. The amendment was made with the understanding the Commission would make a further study of the in-law inheritance statute.

The Commission has made another careful study of the in-law inheritance statute and has again reached the conclusion that the statute should be repealed. In August 1989, the Commission distributed a Tentative Recommendation proposing the repeal of the in-law inheritance statute to a number of lawyers and judges active in the probate law field. The Executive Committee of the Estate Planning, Trust and Probate Law Section of the California State Bar supports the repeal of the in-law inheritance statute. Forty-three individual lawyers and judges wrote to express their view that the statute should be repealed. Some recited their own unsatisfactory experience under the statute. Five were opposed to the repeal. One favored retaining some form of in-law inheritance, but recognized the need to clarify and improve the existing statute. The persons who commented on the Tentative Recommendation are noted in the Acknowledgments which follow.

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

Respectfully submitted,

Edwin K. Marzec
Chairperson

ACKNOWLEDGMENTS

Persons who sent comments to the Commission concerning this recommendation are listed below. An overwhelming majority, including the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar of California, support the Commission's recommendation to repeal Probate Code Section 6402.5 (in-law inheritance). Five persons (identified by * following the name) oppose the repeal. One person (identified by ** following the name) prefers that the existing statute be clarified and improved rather than repealed.

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RECOMMENDATION

Introduction

If a decedent dies intestate without a surviving spouse or issue and was predeceased by a spouse, the decedent's property must be divided into that passing to decedent's heirs under the usual intestate succession rules,[1] and that passing to the predeceased spouse's heirs under Probate Code Section 6402.5,[2] the so-called in-law inheritance statute.

The following property passes to heirs of the predeceased spouse under Section 6402.5:

1. Prob. Code §6402. Under Section 6402, property not attributable to the predeceased spouse passes:

(1) To the decedent's surviving parent or parents.

(2) If there is no surviving parent, to surviving issue of the decedent's parent or parents.

(3) If there is no surviving issue of a parent of the decedent, to the decedent's surviving grandparent or grandparents.

(4) If there is no surviving grandparent, to issue of the decedent's grandparent or grandparents.

(5) If there are no takers in the foregoing categories, to surviving issue of decedent's predeceased spouse.

(6) If there are no takers in the foregoing categories, to decedent's next of kin.

(7) If there are no takers in the foregoing categories, to the surviving parent or parents of a predeceased spouse.

(8) If there are no takers in the foregoing categories, to surviving issue of a parent of the predeceased spouse.

2. Under Section 6402.5, if decedent dies without surviving spouse or issue, real property attributable to decedent's predeceased spouse who died not more than 15 years before decedent, and personal property attributable to decedent's predeceased spouse who died not more than five years before decedent for which there is a written record of title or ownership and the aggregate value of which is $10,000 or more, goes back to relatives of the predeceased spouse as follows:

(1) To surviving issue of the predeceased spouse.

(2) If there is no surviving issue, to the surviving parent or parents of the predeceased spouse.

(3) If there is no surviving parent, to surviving issue of the parent or parents of the predeceased spouse.

If there is no surviving issue, parent, or issue of a parent of the predeceased spouse, property attributable to the predeceased spouse goes to decedent's relatives, the same as decedent's other intestate property. See supra note 1.

See generally Clifford, *Entitlement to Estate Distribution*, in 3 California Decedent Estate Practice §24.19 (Cal. Cont. Ed. Bar 1989).

(1) Real property attributable to the decedent's predeceased spouse[3] who died not more than 15 years before the decedent.

(2) Personal property attributable to the decedent's predeceased spouse[4] who died not more than five years before the decedent, for which there is a written record of title or ownership, and the aggregate value of which is $10,000 or more.

California is the only state with an in-law inheritance statute.[5] Six states other than California have had in-law inheritance at one time or another: Idaho, Indiana, New Mexico, New York, Ohio, and Oklahoma.[6] All six of these states have abolished in-law inheritance.

3. It is difficult to determine exactly what is meant by property "attributable to the decedent's predeceased spouse." Probate Code Section 6402.5(f) defines it as follows:

> (1) One-half of the community property in existence at the time of the death of the predeceased spouse.
>
> (2) One-half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.
>
> (3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.
>
> (4) Any separate property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.

Under subdivision (g) of Section 6402.5, quasi-community property is treated the same as community property. For criticism of the drafting of this section and illustrations of the difficulty of determining what property it covers, see Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-Laws*, 8 Community Prop. J. 107 (1981).

4. See supra note 3.

5. In 1982, the Commission recommended complete repeal of California's in-law inheritance statute. See *Tentative Recommendation Relating to Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2335-38 (1982). Objections were made to the repeal, which was included in a comprehensive revision of the law relating to wills and intestate succession. The effort to repeal in-law inheritance was abandoned so as not to jeopardize enactment of the comprehensive bill. The in-law inheritance statute was continued, but it was limited to real property received from a predeceased spouse who died not more than 15 years before the decedent. See 1983 Cal. Stat. ch. 842, §55. In 1986, in-law inheritance was expanded to apply also to personal property with a written record of title or ownership and an aggregate value of $10,000 or more received from a predeceased spouse who died not more than five years before the decedent. See 1986 Cal. Stat. ch. 873, §1.

6. Annot., 49 A.L.R.2d 391 (1956). See also 7 R. Powell, Real Property ¶ 1001, at 673-77 (Rohan rev. 1989).

The Commission recommends that Probate Code Section 6402.5 be repealed. Any possible benefits resulting from applying a special rule of in-law inheritance are clearly outweighed by the additional expense and delay the statute causes in probate proceedings and by the inequitable results that sometimes occur under the statute. Other recently enacted legislation covers those situations where recognition of the equities calls for inheritance by relatives of a predeceased spouse.[7] In addition, the interpretation and application of the complex and lengthy in-law inheritance statute presents difficult problems, some of which have not been resolved. The reasons for this recommendation are discussed in more detail below.

The In-Law Inheritance Statute Increases Expense and Causes Delay in Probate Proceedings

The in-law inheritance statute imposes additional expense on the estate, adds procedural burdens, and may delay the probate proceeding.

If the decedent died without surviving spouse or issue, was predeceased by a spouse, and the estate includes property covered by the in-law inheritance statute, notice of the probate proceeding must be given to heirs of the predeceased spouse.[8]

7. See infra text under heading "Rights of Relatives of Predeceased Spouse Under Recently Enacted Laws."

8. See Prob. Code §8110. See also B. Ross & H. Moore, California Practice Guide Probate ¶¶3:204.1-3:204.4 (Rutter Group 1988):

> [3:204.1] **Special notice provision re heirs of a predeceased spouse:** Under Prob.C. §6402.5 . . . , if decedent left no surviving spouse or issue, the heirs at law of decedent's *predeceased spouse* are entitled to notice in the following instances (note that these rules apply even in *testate* cases, because the §6402.5 heirs may have standing to file a *will contest*):
>
> 1) [3:204.2] **Real property "attributable" to predeceased spouse:** In estates which include *real property* "attributable" to the decedent's predeceased spouse who died not more than *15 years* before the decedent [Prob.C. §6402.5]; *and/or*
>
> 2) [3:204.3] **Personal property "attributable" to predeceased spouse:** In estates which include *personal property* "attributable" to the decedent's predeceased spouse who died not more than *five years* before the decedent *and* as to which (i) there is a "written record of title or ownership" and (ii) the aggregate fair market value (of such personal property) is *at least $10,000* . . .

This is true even if the decedent died with an unquestionably valid will that disposes of all of the decedent's property, because heirs of the predeceased spouse may have standing to file a will contest.[9]

The notice must be reasonably calculated to give actual notice to all persons interested in the estate.[10] The petitioner

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Conversely, petitioner need *not* give notice to a predeceased spouse's heirs who might have claim to personal property "attributable" to the predeceased spouse who died no more than five years before decedent if petitioner has a "good faith" belief that the aggregate fair market value of such property is *less than* $10,000. But if the personal property is *subsequently* determined to have an aggregate fair market value in excess of $10,000, notice must then be given to the predeceased spouse's heirs under §6402.5. . . .

[3:204.4] *PRACTICE POINTER:* The Code dispenses with the notice requirement if there is no "written record of title or ownership" to the personal property; however, the Judicial Council Form Petition requires notice whenever there is "personal property totaling $10,000 or more" (i.e., without regard to whether there is a "written record" . . .). Despite the Code's waiver provision, notice should be given in doubtful cases.

The same advice applies with respect to the *value* condition: i.e., the Code dispenses with the notice requirement when petitioner has a "good faith" belief that the aggregate fair market value of the §6402.5 personal property is less than $10,000 (above). If the estimated value is *close to* the $10,000 cut-off, it's wise to err on the side of *giving notice*, rather than risk later litigation over "good faith" and possible collateral attack on probate court orders. [brackets in original]

9. B. Ross & H. Moore, California Practice Guide Probate ¶3:204.1 (Rutter Group 1988).

10. See B. Ross & H. Moore, California Practice Guide Probate ¶3:216 (Rutter Group 1988):

[3:216] **Reasonable efforts required to effect personal or mail service:** Notice must be reasonably calculated to give *actual notice* to *all persons interested in the estate* (whether as heirs, testate beneficiaries, *creditors*, or otherwise). [*Tulsa Professional Collection Services, Inc. v. Pope* (1988) _US__, 108 S.Ct. 1340; *Greene v. Lindsey* (1982) 456 US 444; *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 US 306; *Mennonite Board of Missions v. Adams* (1983) 462 US 791 . . . .

Due process does not necessarily mandate the "best possible" manner of service (i.e., personal service). "[M]ail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice." [*Tulsa Professional Collection Services, Inc. v. Pope*, supra, 108 S.Ct. at 1347]

By the same token, mailed notice must itself be "reasonably calculated" to *reach* the proper persons. For due process purposes, therefore, petitioner may be required to make *"reasonably diligent efforts"* to *locate* the interested persons. [*Tulsa Professional Collection Services, Inc. v. Pope*, supra, 1087 S.Ct. at 1347; *Mennonite Board of Missions v. Adams*, supra] *A fortiori*, mail service to the county seat . . . will suffice only if all reasonable efforts to locate the particular heir or beneficiary (or known creditor) have failed.

for probate must make a reasonably diligent effort to determine the identities and whereabouts of heirs of the predeceased spouse.[11] Reasonable effort means more than merely questioning immediate survivors concerning the whereabouts of their relatives.[12]

Counsel should search through telephone directories, contact the Department of Motor Vehicles, use the U. S. Post Office's forwarding procedures, advertise, and review voting rolls and tax rolls. If these efforts are unsuccessful, counsel should consider asking the Social Security Administration to forward the notice.[13]

11. Prob. Code §8110(a) (notice must be given to "known" and "reasonably ascertainable" heirs).

12. B. Ross & H. Moore, California Practice Guide Probate ¶¶3:217-3:219 (Rutter Group 1988):

> [3:217] **"Reasonable" procedures to locate "missing" heirs:** Due process does *not* require "impracticable and extended searches." [*Tulsa Professional Collection Services, Inc. v. Pope*, supra, 108 S.Ct. at 1347; *Mullane v. Central Hanover Bank*, supra, 339 US at 317-318] But "reasonably diligent efforts" to locate the heirs and beneficiaries must be made. [Cf. *Tulsa Professional Collection Services, Inc. v. Pope*, supra (in connection with identifying decedent's creditors)]
>
> Clearly, "reasonable efforts" requires more than simply questioning the immediate survivors about the whereabouts of their relatives. Counsel are expected to do some further investigation.
>
> (a) [3:218] Resort to telephone directories, the DMV, the U.S. Post Office's forwarding procedures, advertising, and review of voting rolls and tax rolls are all acceptable practices to locate missing heirs and beneficiaries.
>
> (b) [3:219] If these efforts are unsuccessful, consider requesting the Social Security Administration to forward notice to the intended recipient. By law, the Administration cannot disclose a person's address; but it can forward notice to the person's last known address or in care of the person's last known employer. [brackets and italics in original]

13. B. Ross & H. Moore, California Practice Guide Probate ¶¶3:217-3:219 (Rutter Group, rev. #1, 1988), which provides:

> [3:217] **"Reasonable" procedures to locate "missing" heirs:** Due process does *not* require "impracticable and extended searches." [*Tulsa Professional Collection Services, Inc. v. Pope*, supra, 108 S.Ct. at 1347; *Mullane v. Central Hanover Bank*, supra, 339 US at 317-318] But "reasonably diligent efforts" to locate the heirs and beneficiaries must be made. [Cf. *Tulsa Professional Collection Services, Inc. v. Pope*, supra (in connection with identifying decedent's creditors)]
>
> Clearly, "reasonable efforts" requires more than simply questioning the immediate survivors about the whereabouts of their relatives. Counsel are expected to do some further investigation.

If petitioner makes a reasonable effort but is unable to locate an heir of the predeceased spouse, notice may be mailed to the county seat where the proceedings are pending.[14] If this alternative method of notice is used, the estate attorney must prepare and present to the court a declaration detailing the efforts to locate the missing heir.[15]

The estate must bear the cost of the search for heirs of the predeceased spouse. The search may be a difficult one, especially where a number of years have passed between the deaths of the spouses.

Also, if the decedent has a valid will and left nothing to the heirs of the predeceased spouse, notice to heirs of the predeceased spouse may arouse unrealistic expectations that they will share in the estate. The estate attorney must deal with inquiries from these heirs, and must explain that the notice is a procedural formality and that under the will the heirs are not entitled to share in the estate. The extra burden on the attorney in finding, notifying, and dealing with heirs of the predeceased spouse may impose additional costs to the estate in the form of additional compensation for "extraordinary services" of the attorney.

(a) [3:218] Resort to telephone directories, the DMV, the U.S. Post Office's forwarding procedures, advertising, and review of voting rolls and tax rolls are all acceptable practices to locate missing heirs and beneficiaries.

(b) [3:219] If these efforts are unsuccessful, consider requesting the Social Security Administration to forward notice to the intended recipient. By law, the Administration cannot disclose a person's address; but it can forward notice to the person's last known address or in care of the person's last known employer. [brackets and italics in original]

14. Prob. Code §1215(d).

15. See, e.g., Contra Costa County Probate Policy Manual §303; Fresno County Probate Policy Memorandum §3.2; Humboldt County Probate Rules §12.6; Los Angeles County Probate Policy Memorandum §7.07; Madera County Probate Rules §10.6; Merced County Probate Rules §307; Orange County Probate Policy Memorandum §2.06; San Diego County Probate Rules §4.44; San Francisco Probate Manual §4.03(b)(1); San Joaquin County Probate Rules §4-201(B); Solano County Probate Rules §7.10; Tuolumne County Probate Rules §12.5.

The In-Law Inheritance Statute Defeats Reasonable Expectations and Produces Inequitable Results

Proponents of in-law inheritance argue that it is needed to avoid the inequity that may result from application of the general intestate succession provisions. But an examination of the results in the three most recent appellate decisions involving the in-law inheritance statute demonstrates that the statute defeats reasonable expectations and often produces inequitable results.

In *Estate of McInnis*,[16] decided in 1986, half the decedent's estate went to her predeceased husband's sister under the in-law inheritance statute, despite undisputed evidence that the sister had been estranged from her brother and from his wife for 28 years and that the heirs of the wife had maintained a close relationship with her and had performed various services for her for more than 10 years immediately prior to her death. The court concluded that the statute compelled this result,[17] a result obviously contrary to the desires of the first-to-die spouse and unanticipated by the last-to-die spouse.[18]

16. 182 Cal. App. 3d 949, 227 Cal. Rptr. 604 (1986).

17. Estate of McInnis, 182 Cal. App. 3d 949, 958, 227 Cal. Rptr. 604, 610 (1986) ("principles of equity cannot be used as a means to avoid the mandate of a statute").

18. Another case where the desires of the predeceased spouse were defeated was brought to the attention of the Commission. See letter from Hyman Goldman to Robert L. Stack, Chairman of the Probate Committee, L.A. County Bar Association, dated July 20, 1989 (copy on file in office of California Law Revision Commission):

> I am probating an estate where a surviving spouse died intestate and the predeceased spouse left a will. There is no issue of the marriage of twenty-five years. The predeceased spouse, the wife, had a previous marriage of several years duration and had adopted the daughter of her first husband from whom she was divorced. After the divorce there was no contact or relationship between the predeceased spouse and her adopted daughter. The predeceased spouse disinherited her adopted daughter in her will and left her estate to her aunt with whom she had a life long close friendship.

In this case, the last-to-die spouse's estate attributable to the predeceased spouse passed under the in-law inheritance statute to the adopted daughter. Since the decedent had disinherited the adopted daughter in her will, the result under the in-law inheritance statute obviously was contrary to the wishes of the predeceased spouse.

In *Estate of Luke*,[19] a 1987 case, Raymond and Catherine Luke were married in Illinois in 1926, moved to Iowa in 1937, and lived there until Catherine's death in 1978. Soon after, Raymond moved to California where he died intestate in 1984. There were no children of the marriage. Catherine's nieces and nephews sought to take a share of the estate under the California in-law inheritance statute. Had Raymond moved to any other state, his heirs would have taken the entire estate. But because Raymond died in California, his estate was subject to California's in-law inheritance statute. Raymond was probably unaware of the California in-law inheritance statute, since California is the only state having such a statute.[20] He probably expected his estate to go to his blood relatives, not to Catherine's. This case illustrates how the in-law inheritance statute may defeat reasonable expectations of the last-to-die spouse.

Estate of Riley,[21] decided in 1981, is another case that shows the inequity that may result under the in-law inheritance statute. In *Riley*, decedent's mother made a gift of real property to her son and his wife as joint tenants. The wife died, and the son took his wife's interest as the surviving joint tenant. The son died intestate without surviving spouse or issue. Decedent's mother claimed the property as heir of the decedent. The brother and nieces and nephews of the predeceased wife claimed under the in-law inheritance statute. The Court of Appeal held that decedent's mother was entitled to all of the property under the statute in effect at the time of decedent's death.[22] However, the opposite result is required

19. 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987).

20. In fact, it is unlikely that a person who has lived in California all of his or her life would be aware of the in-law inheritance statute. The purpose of intestate succession law is to provide a will substitute for a person who dies without a will. Intestate succession law should correspond to the manner in which the average decedent would dispose of property by will. See Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 200 (1979).

21. 119 Cal. App. 3d 204, 173 Cal. Rptr. 813 (1981).

22. Former Prob. Code §229 (amended by 1976 Cal. Stat. ch. 649, §1 and repealed by 1983 Cal Stat. ch. 842, §19).

under the in-law inheritance statute now in effect: Heirs of the predeceased spouse would take a share of the property at the expense of the mother who gave the property to the decedent and his predeceased spouse,[23] a clearly inequitable result.

It is unclear whether the in-law inheritance statute applies to property given by one spouse to the other during marriage when the marriage ends in divorce. On the divorce, the court will confirm the separate property interest of the donee spouse. Assume the donor dies first; the donee dies last, and dies intestate. Is the property still "attributable to" the donor spouse, or does the divorce cut off rights under the in-law inheritance statute? If the gift was made during marriage, ancestral property theory suggests that divorce does not cut off rights under the in-law inheritance statute.[24] This is likely to defeat the decedent's intent in most cases.

The in-law inheritance statute also causes problems with wills that give property to the testator's "heirs":[25] Under the in-law inheritance statute, blood relatives of the predeceased

23. See Prob. Code §6402.5. Section 6402.5 applies to "the portion of the decedent's estate attributable to the decedent's predeceased spouse." See Section 6402.5(a). The language quoted is defined as including "any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship" and "any separate property of the predeceased spouse . . . which vested in the decedent upon the death of the predeceased spouse by right of survivorship." Section 6402.5(f). Accordingly, whether the joint tenancy interest of the predeceased spouse is community or separate property, it is subject to the present in-law inheritance statute.

24. Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-laws*, 8 Community Prop. J. 107, 129-30 (1981). If the transfer from one spouse to other takes place after their divorce, the in-law inheritance statute does not apply. Estate of Nicholas, 69 Cal. App. 3d 976, 982, 138 Cal. Rptr. 526, 529 (1977) (in-law inheritance statute did not apply where predeceased spouse was divorced from decedent at time decedent obtained sole title as a result of right of survivorship in a joint tenancy).

25. See In re Estate of Page, 181 Cal. 537, 185 P. 383 (1919) (devise to "my lawful heirs"); In re Estate of Watts, 179 Cal. 20, 175 P. 415 (1918) (devise to "my heirs"); Estate of Baird, 135 Cal. App. 2d 333, 287 P.2d 365 (1955) (gift to "heirs" of surviving spouse on termination of testamentary trust); In re Estate of Wilson 65 Cal. App. 680, 225 P. 283 (1924) (devise to "my heirs"). See also Ferrier, *Gifts to "Heirs" in California*, 26 Calif. L. Rev. 413, 430-36 (1938).

spouse take as heirs of the decedent, not as heirs of the predeceased spouse.[26] So a dispositive provision to the testator's "heirs" may include blood relatives of the predeceased spouse. Normally, one who gives property by will to his or her "heirs" expects that the property will go to his or her own blood relatives.[27] Thus, application of the in-law inheritance statute to a will is a potential trap for one drafting a will.

The In-Law Inheritance Statute is Complex and Difficult to Interpret and Apply

Section 6402.5 is a long, complex statute that is difficult to understand and apply. Interpretation and application of the statute wastes judicial resources and imposes litigation costs on the estate. Law review articles have analyzed the statute, pointing out difficulties of interpretation and defects in the statute.[28] Some articles conclude that the in-law inheritance statute should be repealed.[29]

Tracing and Apportionment Problems

The in-law inheritance statute requires that the estate be separated into property attributable to the predeceased spouse and property not so attributable. This causes difficult

26. Note, *Confusion Surrounding the Determination of Heirs by Application of Sections 228 and 229 of the California Probate Code*, 7 Hastings L.J. 336 (1956).

27. Note, *Confusion Surrounding the Determination of Heirs by Application of Sections 228 and 229 of the California Probate Code*, 7 Hastings L.J. 336, 338 (1956).

28. See, e.g., Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 204-08 (1979); Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-laws*, 8 Community Prop. J. 107, 135 (1981). See also Currie, *Justice Traynor and the Conflict of Laws*, 13 Stan. L. Rev. 719, 733-42 (1961); Ferrier, *Rules of Descent Under Probate Code Sections 228 and 229, and Proposed Amendments*, 25 Calif. L. Rev. 261 (1937) (in-law inheritance statute "productive of complexities, anomalies, and injustices"); Evans, *Comments on the Probate Code of California*, 19 Calif. L. Rev. 602, 614-15 (1931).

29. Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 204-08 (1979); Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-laws*, 8 Community Prop. J. 107, 135 (1981). See also Fellows, Simon & Rau, *Public Attitudes About Property Distribution at Death and Intestate Succession Laws in the United States*, 1978 Am. B. Foundation Research J. 321, 344.

problems of tracing, commingling, and apportionment.[30] Two recent cases illustrate these problems.[31]

The tracing problem is illustrated by *Estate of Luke*.[32] In the *Luke* case, the decedent died intestate in California, having been predeceased by his spouse. The court examined property transactions going back more than 50 years because the decedent had owned a business before marriage which he sold during the marriage. In holding that the decedent's estate was subject to in-law inheritance, the court was forced to "unravel a snarl of conflicting presumptions and cases reaching apparently inconsistent conclusions . . . . The task is not an easy one."[33]

The apportionment problem is illustrated by *Estate of Nereson*.[34] Oberlin Nereson died intestate having been predeceased by his spouse, Ethel. Their home had been community property. After Ethel's death, Oberlin continued to make mortgage payments, and the home appreciated in value. The case involved a dispute between Oberlin's sister and Ethel's two sisters. Because the home had been community property, it was clear that the in-law inheritance statute applied, and that Ethel's sisters were entitled to an interest. But Oberlin's sister asked for a share, arguing that Oberlin had made mortgage payments after Ethel's death out of his separate property.[35] The court agreed, and held that it

30. Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-laws*, 8 Community Prop. J. 107, 134 (1981).

31. Estate of Luke, 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987); Estate of Nereson, 194 Cal. App. 3d 865, 239 Cal. Rptr. 865 (1987).

32. 194 Cal. App. 3d 1006, 240 Cal. Rptr. 84 (1987).

33. Estate of Luke, 194 Cal. App. 3d 1006, 1010-11, 240 Cal. Rptr. 84, 86 (1987). California's in-law inheritance statute has been called "almost incomprehensible." Estate of McInnis, 182 Cal. App. 3d 949, 956, 227 Cal. Rptr. 604, 609 (1986).

34. Estate of Nereson, 194 Cal. App. 3d 865, 239 Cal. Rptr. 865 (1987).

35. In the *Nereson* case, there was also an apportionment issue concerning fire insurance proceeds. The home was damaged by fire shortly before Oberlin's death. Fire insurance proceeds were paid into his estate. The fire insurance premium had been paid out of Oberlin's separate property funds, long after his wife's death. The court agreed that the fire insurance proceeds should not be subject to in-law inheritance. Estate of Nereson, 194 Cal. App. 3d 865, 873-74, 239 Cal. Rptr. 865, 869-70 (1987).

would be equitable to award Oberlin's sister a pro rata share based on the proportion of the mortgage payments after Ethel's death to the total mortgage payments.

The court had to apportion the total value of the home to separate out the portion attributable to the predeceased spouse from the portion not so attributable.[36] Apportionment requires resort to community property law as well as to intestate succession law.[37] Under community property law, when there have been both community and separate property contributions to property that has appreciated in value, the court must allocate the proper portion of enhanced value to the separate and community interests.[38] There is no invariable formula or precise standard; allocation is a question of fact governed by the circumstances of each case.[39] The trial court has considerable discretion in choosing the method for allocating separate and community property interests.[40] Thus, it is impossible to tell what the actual apportionment will be without litigating the issue.

36. Apportionment under in-law inheritance is an exception to intestate succession law generally, under which there is no apportionment.

37. Estate of Nereson, 194 Cal. App. 3d 865, 871, 239 Cal. Rptr. 865, 868 (1987).

38. 7 B. Witkin, Summary of California Law *Community Property* §25, at 5119 (8th ed. 1974).

39. 7 B. Witkin, Summary of California Law *Community Property* §26, at 5120 (8th ed. 1974).

40. Estate of Nereson, 194 Cal. App. 3d 865, 876, 239 Cal. Rptr. 865, 872 (1987). One commonly used rule of apportionment in community property law is that of Pereira v. Pereira, 156 Cal. 1, 103 P. 488 (1909). Under *Pereira*, the separate property contribution to community property is allowed the usual interest on a long-term investment well secured — for example, seven percent. 7 B. Witkin, Summary of California Law *Community Property* §28, at 5121 (8th ed. 1974). In *Nereson*, the mortgage payments made from separate property were $7,177. If we apply the *Pereira* rule and allow seven percent interest on the mortgage payments, that yields about $2,000 as the return on separate property. The result is that most of the appreciation (about $115,000) accrues to the community property interest, not the separate property interest.

The other commonly used rule of apportionment in community property law is that of Van Camp v. Van Camp, 53 Cal. App. 17, 199 P. 885 (1921). In *Van Camp*, the husband formed a corporation with his separate property funds. He worked for the corporation and received a salary. The salary was obviously community property, but the court held that corporate dividends were his separate property. The court declined to apportion any of the corporate earnings to the husband's skill and labor, a community contribution. Under *Van Camp*, the reasonable value of the husband's services is allocated to the community

Rights of Relatives of Predeceased Spouse Under Recently Enacted Laws

A number of recently enacted laws provide rules to deal with situations where equitable considerations favor inheritance by relatives of a predeceased spouse. These new laws do not depend on identifying the source of the property, nor do they require complex tracing and apportionment or burdensome search and notice. The enactment of these new laws has made the in-law inheritance statute no longer necessary or desirable.

The strongest case for inheritance by a child of a predeceased spouse is one where the decedent would have adopted the child of the predeceased spouse but for a legal barrier. Probate Code Section 6408, enacted in 1983, provides that in this case a child of the predeceased spouse takes by intestate succession:

> (b) For the purpose of determining intestate succession by a person or his or her decedents from or through a . . . stepparent, the relationship of parent and child exists between that person and his or her . . . stepparent if (1) the relationship began during the person's minority and continued throughout the parties' joint lifetimes and (2) it is established by clear and convincing evidence that the . . . stepparent would have adopted the person but for a legal barrier.

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interest. The rest of the increase in value remains separate property. This is the reverse of the *Pereira* rule (reasonable return to separate contribution, bulk of appreciation to community interest). If we apply the *Van Camp* rule to the *Nereson* case and allow a seven percent return to the community interest, that yields about $24,000 as the return on community property. The result is that most of the appreciation in value (about $93,000) accrues to the separate property interest, not the community interest.

In summary, the *Pereira* and *Van Camp* rules yield the following results in the *Nereson* case:

	Community property portion	*Separate property portion*
Pereira rule:	$115,000	$2,000
Van Camp rule:	$24,000	$93,000

This repeal of the in-law inheritance statute would not affect this provision which provides significantly greater protection to the stepchild than the in-law inheritance statute, since the in-law inheritance statute applies only where the decedent leaves no surviving spouse or issue and only to property attributable to the predeceased spouse.

Another compelling case for inheritance by relatives of a predeceased spouse exists where one spouse kills the other and then dies. Without special provisions to cover this case, the killer spouse would inherit from the predeceased spouse, and then relatives of the killer spouse would take the property of the killer spouse, including the property inherited from the predeceased spouse. But Probate Code Sections 250-257 prevent a person who feloniously and intentionally kills another from receiving any property from the decedent, whether by will, intestate succession, nonprobate transfer, or otherwise. Thus, if one spouse kills another, the property of the deceased spouse goes to heirs of the deceased spouse excluding the killer spouse. The in-law inheritance statute is unnecessary to deal with this situation.

In an unusual case, it may be possible for the killer spouse to predecease the victim spouse and thus to take advantage of the in-law inheritance statute:[41] In a murder-suicide case about fifteen years ago, the husband shot his wife and then shot himself. He died a few minutes before his wife did. They were both intestate. There were no children of the marriage. On the husband's death, all the community property passed to his wife. When she died a few minutes later, the former community property was subject to the in-law inheritance statute — the beneficiaries were children of the killer by a prior marriage.[42] Repeal of the in-law inheritance

41. See Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-laws*, 8 Community Prop. J. 107 (1981).

42. Reppy & Wright, *California Probate Code § 229: Making Sense of a Badly Drafted Provision for Inheritance by a Community Property Decedent's Former In-laws*, 8

statute would reduce the likelihood that relatives of the killer spouse could take in such a case.[43]

Under legislation enacted in 1989, a potential heir must live at least 120 hours longer than a decedent who dies without a will in order to inherit property from that decedent.[44] This new rule provides a more just result where a husband and wife each have children of a prior marriage and are both killed in the same accident. Without the new rule, if one spouse survived the other by a fraction of a second, that spouse's children would inherit all the community property and a disproportionate share of the separate property. Under the new rule, the separate property of each spouse and half of the community property passes to that spouse's heirs, a result more consistent with what the spouses probably would have wanted. The in-law inheritance statute did not provide a satisfactory solution to this problem, since the statute does not apply where the last spouse to die has surviving issue. The new rule takes into account the equities of the situation and deals with them in the same way they are dealt with in a number of other states.[45]

Community Prop. J. 107 (1981). In the insurance context, judicial decisions have held that the killer's heirs should not benefit from the crime. See, e.g., Meyer v. Johnson, 115 Cal. App. 646, 2 P.2d 456 (1931). Cf. Estate of Jeffers, 134 Cal. App. 3d 729, 182 Cal. Rptr. 300 (1982) (order fixing inheritance tax in murder- suicide case). However, under the in-law inheritance statute, relatives of the predeceased spouse are considered heirs of the last-to-die spouse, not heirs of the predeceased spouse. Note, *Confusion Surrounding the Determination of Heirs by Application of Sections 228 and 229 of the California Probate Code*, 7 Hastings L.J. 336 (1956). Thus it appears that, in the murder-suicide case where the killer dies first, relatives of the killer spouse can take from the victim spouse under the in-law inheritance statute. Because of revisions in the in-law inheritance statute since this murder-suicide case, relatives of the killer spouse would only take the half of the community property that belonged to the killer spouse and passed to the victim spouse on the former's death. See Reppy & Wright, supra, at 108.

43. Relatives of the first-to-die killer spouse could still take from the last-to-die victim spouse under subdivision (g) of Probate Code Section 6402 as a last resort to prevent escheat if the victim spouse had no blood relatives.

44. Prob. Code §6403, as amended by 1989 Cal. Stat. ch. 544, § 5. The 1989 amendment to Section 6403 makes the section the same in substance as Section 2-104 of the Uniform Probate Code (1987) insofar as Section 2-104 applies to taking by intestate succession.

45. See *Recommendation Relating to 120-Hour Survival Requirement*, 20 Cal. L. Revision Comm'n Reports 21 (1990).

In most cases, a person who dies without a will probably would want the children or grandchildren of his or her spouse to take before his or her more remote heirs. The decedent may well have had a close relationship with the spouse's children or grandchildren, and little affection or contact with his or her more remote relatives. This situation is dealt with by a provision added to the general intestate succession statute in 1983[46] to provide that the surviving issue of decedent's predeceased spouse take in preference to more remote heirs of the decedent. This provision deals more adequately with this situation than does the in-law inheritance statute.[47]

A person who dies without a will most likely would want the surviving parents or surviving issue of a parent of his or her predeceased spouse to take in preference to having the property escheat to the state. This situation is dealt with by a provision in the general intestate succession statute[48] which permits these relatives of the predeceased spouse to take when there are no next of kin of the decedent. Repeal of the special rule of in-law inheritance would not disturb this general intestate succession rule.

As discussed above, the in-law inheritance statute is no longer needed to deal with situations where equity calls for inheritance by relatives of a predeceased spouse. The recently-enacted provisions outlined above deal with these situations better and more comprehensively than does the in-law inheritance statute, and without the need to identify the source of the property, without complex tracing and apportionment, and without burdensome search and notice requirements.

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46. Prob. Code §6402 (added by 1983 Cal. Stat. ch. 842, §55).

47. A distinguished law professor has written that the objective of protecting children of the predeceased spouse by a prior marriage may be better accomplished by improving the priority such children have under the general intestate succession law to take all of the decedent's property, instead of creating a special rule for a limited class of property—that attributable to a predeceased spouse. See Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 207 (1979).

48. Prob. Code §6402.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to repeal Section 6402.5 of the Probate Code, relating to intestate succession.

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

Probate Code § 6402.5 (repealed). Portion of estate attributable to decedent's predeceased spouse

SECTION 1. Section 6402.5 of the Probate Code is repealed.

~~6402.5. (a) For purposes of distributing real property under this section if the decedent had a predeceased spouse who died not more than 15 years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:~~

~~(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse, if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.~~

~~(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.~~

~~(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.~~

~~(b) For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:~~

~~(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.~~

~~(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.~~

~~(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.~~

~~(c) For purposes of disposing of personal property under subdivision (b), the claimant heir bears the burden of proof to show the exact personal property to be disposed of to the heir.~~

~~(d) For purposes of providing notice under any provision of this code with respect to an estate that may include personal property subject to distribution under subdivision (b), if the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate is believed in good faith by the petitioning party to be less than ten thousand dollars ($10,000), the petitioning party need not give notice to the issue or next of kin of the predeceased spouse. If the personal property is subsequently determined to have an aggregate fair market value in excess of ten thousand dollars ($10,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law.~~

~~(e) For the purposes of disposing of property pursuant to subdivision (b), "personal property" means that personal property in which there is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more.~~

~~(f) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:~~

~~(1) One-half of the community property in existence at the time of the death of the predeceased spouse.~~

~~(2) One-half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.~~

~~(3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.~~

~~(4) Any separate property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of survivorship.~~

~~(g) For the purposes of this section, quasi-community property shall be treated the same as community property.~~

~~(h) For the purposes of this section:~~

~~(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.~~

~~(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.~~

Comment. Former Section 6402.5 is not continued. See *Recommendation Proposing Repeal of Probate Code Section 6402.5 (In-Law Inheritance)*, 20 Cal. L. Revision Comm'n Reports 571 (1990).

Uncodified transitional provision

SEC. 2. This act does not apply in any case where the decedent died before the operative date of this act. and such case continues to be governed by the law applicable to the case before the operative date of this act.