

First Supplement to Memorandum 92-42

Subject: Study L-1033.01 - Heirship Proceeding Under Former Probate
Code Sections 1190-1192

Memorandum 92-42 discusses a suggestion from the title insurance industry that former Probate Code Sections 1190-1192 be restored to the Probate Code. Those sections provided a simple means of obtaining a court order determining the identity of class members who might have succeeded to an interest in property. The Commission did not continue the provisions in the new code because they duplicate other available procedures; they also have a number of problems, pointed out in the memorandum.

Since the memorandum was written, the former provisions have been amended into pending legislation for enactment as Probate Code Sections 248-249, at the request of the title insurance industry. See Exhibit 1. The proposed language is inartfully drafted and doesn't mesh well with the rest of the code, but it does accomplish the stated objective of restoring former law.

In light of this development, the staff recommends that the Commission take no further action on this matter. The legislature has the matter before it and can act one way or the other.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

CHAPTER 3. IDENTITY OF HEIRS

248. When title to real or personal property, or any interest therein, vests, other than by laws of succession, on the heirs, heirs of the body, issue, or children of any person, without other description, or means of identification of the persons embraced in the description, any person interested in the property as the heir, heir of the body, issue, or child, or his or her successor in interest, or the personal representative of any interested person or of his or her successor in interest, may file a verified petition in the superior court of the county in which the property or any part thereof is situated, setting forth briefly the deraignment of title of petitioner, a description of the property affected, and so far as known to the petitioner, the names, ages, and residences of the heirs, heirs of the body, issue or children whose identity is sought to be determined, and if any is dead or if the residence of any is unknown, stating the facts, and requesting that a decree be entered determining and establishing the identity of the persons embraced in the general description.

248.5. The clerk shall set the petition for hearing by the court and give notice thereof in the manner provided in Sections 1230 and 1260. The petitioner shall cause notice of the hearing to be given in the manner specified in Sections 1220 and 1260.

249. At any time before the hearing any person interested in the property may answer the petition and deny any of the matters contained therein. The court shall hear the proofs offered by the petitioner and by any person contesting and shall make a decree conformable to the proofs. The decree shall be prima facie evidence of the facts determined thereby, and shall be conclusive in favor of anyone acting thereon in good faith without notice of any conflicting interest.