

Study L-1030

October 20, 1995

Memorandum 95-59

Decedents' Estates: Collecting Small Estate Without Administration

Attached is a staff draft of a Tentative Recommendation on Collecting Small Estate Without Administration. Under existing law, if the gross value of the estate is small, various summary procedures may be used to collect decedent's property without administration — collecting personal property by affidavit if the gross value of decedent's estate in California does not exceed \$60,000, obtaining a court order determining succession if the gross value of the estate in California does not exceed \$60,000, and obtaining title to real property by affidavit if the gross value of California real property does not exceed \$10,000. Prob. Code §§ 13000-13210. Various kinds of property are excluded from the estate maximums, including joint tenancy and property in which decedent had a life or other interest terminable at death. Judge Richard Frazee suggests making clear that property held in an inter vivos trust is not included in the \$60,000 estate maximum. A copy of his letter is attached.

Under existing law, property in an inter vivos trust is not part of decedent's estate, *Estate of Heigho*, 186 Cal. App. 2d 360, 9 Cal. Rptr. 196 (1960), and thus should be excluded from the maximum estate value for summary collection. California Practice Guide Probate § 2:12 (Rutter Group 1994 ed.) (inter vivos trust assets "should be disregarded in calculating the dollar limitation" for the affidavit procedure); see also Barnum, *Summary Administration*, in 1 California Decedent Estate Practice § 5.8 (Cal. Cont. Ed. Bar, March 1992).

Perhaps the statute should be amended to make it clear without reference to case law or secondary materials, as the attached Tentative Recommendation would do. This might be useful for judges and practitioners who must use this statute frequently, as Judge Frazee's letter illustrates.

Respectfully submitted,

Robert J. Murphy
Staff Counsel



Superior Court of the State of California
County of Orange

Law Revision Commission
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File: _____

September 13, 1995

CHAMBERS OF
RICHARD O. FRAZEE, SR.
JUDGE

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Executive Director
Law Revision Commission
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Re: California Probate §13050

Dear Sir or Madam:

It has come to this court's attention that property held in an Inter Vivos Trust, because it is not part of a probate estate, should be excluded from valuation of the decedent's property for purposes of proceeding under Probate Code §13100 (Estates under \$60,000).

However, Probate Code §13050 describing excluded property does not specifically refer to property in an Inter Vivos Trust.

It is requested that Probate Code §13050 be amended to clarify the apparent discrepancy.

Very truly yours,

A handwritten signature in dark ink, reading "Richard O. Frazee, Sr.", is written over the typed name.

Richard O. Frazee, Sr.
Supervising Judge
Probate Department

ROF:ka

Enclosures

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Collecting Small Estate Without Administration

November 1995

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN January 5, 1996.

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

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SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would codify case law to the effect that property in a trust revocable by the decedent during lifetime is excluded from the maximum estate value for use of summary procedures to collect decedent's property without court-supervised administration.

COLLECTING SMALL ESTATE WITHOUT ADMINISTRATION

If the gross value of a decedent's property in this state is small, various summary procedures may be used to collect or obtain title to decedent's property without the need for court-supervised administration.¹ Various kinds of property are excluded from the maximum estate value for use of summary procedures, including joint tenancy property and property in which the decedent had a life or other interest terminable at death.²

The statutory exclusions do not mention property held in a trust revocable³ by the decedent during lifetime. Property in a revocable inter vivos trust is excluded from the \$60,000 estate maximum, because such property is not part of the decedent's estate.⁴ The inter vivos trust is now an important estate planning instrument, and it would be helpful to interested persons if the statutory exclusions made specific reference to it. This would not change existing law.

The Commission recommends it be made clear by an express exclusion that property in a revocable inter vivos trust is not included in the decedent's estate for the purpose of the affidavit procedure for collection of decedent's property and other summary collection provisions for small estates.⁵

1. Summary procedures include collecting personal property by affidavit if the gross value of decedent's estate in California does not exceed \$60,000, obtaining a court order determining succession if the gross value of the estate in California does not exceed \$60,000, and obtaining title to real property by affidavit if the gross value of California real property does not exceed \$10,000. See Prob. Code §§ 13000-13210.

2. Prob. Code § 13050.

3. Property in a revocable inter vivos trust is treated for some purposes as decedent's property. See Prob. Code § 19001 (decedent's revocable trust subject to creditors' claims if estate inadequate). *Cf.* Prob. Code § 18200 (revocable trust subject to creditors' claims during settlor's lifetime). Property in an irrevocable inter vivos trust is more immune to creditors' claims, but may be reached by creditors if the settlor is a beneficiary of the trust, Prob. Code § 15304, or received no consideration for creating it, Civ. Code §§ 3439.04, 3439.05. See generally California Trust Administration § 10.32, at 427 (Cal. Cont. Ed. Bar, Feb. 1995). Property in an irrevocable trust is generally not part of the estate of a deceased settlor for federal estate taxes. Drafting California Revocable Living Trusts § 1.17, at 12 (2d ed. Cal. Cont. Ed. Bar 1984).

4. Estate of Heigho, 186 Cal. App. 2d 360, 365, 9 Cal. Rptr. 196 (1960). *Accord*, California Practice Guide Probate § 2:12 (Rutter Group 1994 ed.) (inter vivos trust assets "should be disregarded in calculating the dollar limitation").

5. See Prob. Code §§ 13000-13210.

RECOMMENDED LEGISLATION

Prob. Code § 13050 (amended). Property excluded

13050. (a) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, including but not limited to property in a trust revocable by the decedent during lifetime, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. For the purposes of this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" are defined in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5.

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding five thousand dollars (\$5,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

Comment. Subdivision (a)(1) of Section 13050 is amended to add the reference to a trust revocable by the decedent during lifetime. It is a specific application of the principle stated in paragraph (a)(1) that property in which the decedent had an interest terminable at death is excluded in determining the property or estate of the decedent for purposes of this part. This codifies case law. See *Estate of Heigho*, 186 Cal. App. 2d 360, 365, 9 Cal. Rptr. 196 (1960).