

First Supplement to Memorandum 2008-10

Donative Transfer Restrictions: Disqualified Person

The Commission has received an email from Prof. Ira L. Shafiroff, of Southwestern Law School, Los Angeles. He writes in general support of the content of Memorandum 2008-10 and notes an interesting historical detail:

I have read Memorandum 2008-10 and am in general agreement with the Commission. I do have one comment to make, however. As for defining degree of relationship, former California Probate Code section 251 (repealed in 1983) provided: "The degree of relationship is established by the number of generations, with each generation called a degree." It is interesting that the reason for repeal, given by the Law Revision Commission was: "The term 'degree of kinship' is not statutorily defined, since its meaning is well understood." 16 Cal. L. Rev. Comm. Reports 2509 (1982).

Perhaps California should resurrect former section 251.

In fact, former law provided additional guidance in Probate Code Sections 252-253. Taken together, the three sections provided:

251. The degree of kindred is established by the number of generations, and each generation is called a degree.

252. Lineal consanguinity, or the direct line of consanguinity, is the relationship between persons one of whom is a descendant of the other. The direct line is divided into a direct line descending, which connects a person with those who descend from him, and a direct line ascending, which connects a person with those from whom he descends. In the direct line there are as many degrees as there are generations. Thus, the child is, with regard to the parent, in the first degree; the grandchild, with regard to the grandparent, in the second; and vice versa as to the parent and grandparent with regard to their respective children and grandchildren.

253. Collateral consanguinity is the relationship between people who spring from a common ancestor, but are not in a direct line. The degree is established by counting the generation from one relative up to the common ancestor and from the common ancestor to the other relative. In such computation the first relative is excluded, the other included, and the ancestor counted but once.

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

Thus, brothers are related in the second degree, uncle and nephew in the third degree, cousins german in the fourth, and so on.

See 1931 Cal. Stat. ch. 281.

The concept of degree of kinship still plays an important role in the Probate Code. For example Section 2111.5(a) precludes certain persons with authority over a guardianship or conservatorship from acquiring certain interests in the property of the ward or conservatee. That preclusion extends to those who are “related by blood or marriage” to the disqualified person. “Related by blood or marriage” is defined as follows:

- (1) A person’s spouse or domestic partner.
- (2) Relatives within the second degree of lineal or collateral consanguinity of a person or a person’s spouse.

Similarly, the provisions governing intestate succession depend in part on the “degree of kinship” of different heirs. See Probate Code Sections 6402-6402.5.

The staff is not sure how a reader would understand those provisions without the sort of guidance that was provided in former Sections 251-253.

Ordinarily, our practice is not to disturb a prior Commission decision. In this case, sufficient time may have passed to justify making a fresh evaluation of the merits of that decision. Whatever may have been true in the past, the staff does not believe that the rules governing calculation of “degrees of kinship” are currently well understood. **It would probably be helpful to provide general guidance on how to calculate degrees of kinship.**

Respectfully submitted,

Brian Hebert
Executive Secretary