

Second Supplement to Memorandum 2015-47

New Topics and Priorities: Additional Comments and Suggestions

The Commission¹ has received two new communications relating to its annual consideration of new topics and priorities. The following letter is attached for the Commission’s reference:

Exhibit p.

- Joseph Lisi (12/4/15)1

This letter and an oral communication with Beverly Pellegrini are discussed briefly below.

ADDITIONAL COMMENT FROM JOSEPH LISI

Joseph Lisi submitted an additional comment related to the Probate Code’s affidavit procedure for real property of small value.²

Mr. Lisi’s letter requests “that [the Commission] submit two Probate Code amendments to the California legislature for their adoption.”³

First, Mr. Lisi suggests that the Probate Code be amended to require that the contents of the affidavit include the Assessor’s Parcel Number (hereafter, “APN”). Mr. Lisi states that “no California recorder’s office will record such an affidavit without an APN specified on the document.”⁴ Currently, the Judicial Council form requires that the APN be included in the affidavit.⁵ Thus, Mr. Lisi’s concern appears to be that the statute does not fully identify the information that, in practice, must be included on the affidavit. **While there does not appear to be**

1. 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.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See also Memorandum 2015-47, pp. 26-27; *id.* at Exhibit pp. 3-5.

3. Exhibit, p. 1.

4. *Id.*

5. See Judicial Council Form DE-305: Affidavit re Real Property of Small Value (as revised, July 1, 2015), *available at* <http://www.courts.ca.gov/documents/de305.pdf>.

a problem in practice, the staff recommends raising this issue with Judicial Council, along with the referral of Mr. Lisi's other concern.

Second, Mr. Lisi reiterates his earlier suggestion regarding the treatment of attachments in the certified copy of the affidavit.⁶ **As indicated in the main memorandum, the staff recommends referring this issue to Judicial Council for resolution.**⁷ The Judicial Council is in the best position to determine whether the form can be amended to address Mr. Lisi's concern. Similarly, the Judicial Council is in the best position to assess whether corrective legislation is necessary.

ADDITIONAL COMMENT FROM BEVERLY PELLEGRINI

Beverly Pellegrini spoke to the staff by phone on December 7, 2015. In that conversation, Ms. Pellegrini requested that the Commission consider recommending an express prohibition on the inclusion of false statements in pleadings.

The staff has not yet had time to fully analyze Ms. Pellegrini's concern. However, Code of Civil Procedure Section 128.7 appears to address her general concern, at least in part. Subdivision (b) of Section 128.7 provides:

(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) *The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.*

(4) *The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.*⁸

6. See Memorandum 2015-47, pp. 26-27; *id.* at Exhibit pp. 3-5.

7. *Id.* at 27.

8. Emphasis added.

Section 128.7 also provides for sanctions and punitive damages for certain violations of subdivision (b).⁹ Section 128.7 does not, however, apply to “disclosures and discovery requests, responses, objections, and motions.”¹⁰

Unless the Commission directs otherwise, the staff will address this issue in next year’s New Topics memorandum.

Respectfully submitted,

Kristin Burford
Staff Counsel

9. See Code Civ. Proc. § 128.7(c)-(f).

10. *Id.* § 128.7(g).

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California Law Revision Commission

Re: CLRC New Topics
Certified Copy of Affidavit for Real Property of Small Value
Probate Code Sections 13200 and 13202
Hearing Date: December 10, 2015 @ 10 A.M.

I respectfully request that you submit the following Probate Code amendments to the California legislature for their adoption.

Inasmuch as no California recorder's office will record such an affidavit without an APN specified on the document, subdivision (a)(3) of section 13200 should be amended, by adding the appropriate language regarding an APN, so as to read in full as follows:

§ 13200(a)(3)

A legal description and the Assessor's Parcel Number (APN) of the real property, and the interest of the decedent therein.

In addition, due to the variables involved as to the number of signatory affiants and corresponding acknowledgments, and the number and length of legal descriptions involved, section 13202 should also be amended, by adding the appropriate language regarding those matters, so as to read in full as follows:

§ 13202

Upon receipt of the affidavit and the required fee, the court clerk, upon determining that the affidavit is complete and has the required attachments, shall file the affidavit and attachments and shall issue a certified copy of the affidavit without ~~the~~ attachments other than ((i) the attachment(s) containing the name and signature of additional affiant(s), (ii) the attachment(s) setting forth additional acknowledgment(s), and (iii) the attachment labeled "Legal Description" and setting forth the APN and legal description of the property. The certified copy, with those of the applicable attachments specified above, shall be recorded in the office of the county recorder of the county where the real property is located. The county recorder shall index the certified copy in the index of grantors and grantees. The decedent shall be indexed as the grantor and each person designated as a successor to the property in the certified copy shall be indexed as a grantee.

Inasmuch as the Judicial Council Mandatory Form already makes provisions for the foregoing matters, that form would not need to be changed in any way. In addition, the proposed amendments would conform with the reality of that which the county recorders are accepting for recording; namely, the said Mandatory Form with the appropriate attachments (contrary to the present language of the statute).

Respectfully submitted,

s/

J. M. Lisi

JML:me