

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

Probate Law Revisions

- Alternate Beneficiary for Unclaimed Distribution
- Liability of Property Passing to Surviving Spouse
for Debts of Decedent

September 1999

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 November 15, 1999.

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.

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739
650-494-1335 FAX: 650-494-1827

SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation addresses two problems in California probate law.

Alternate Beneficiary for Unclaimed Distribution

Under this recommendation, when a court orders distribution from a decedent's estate to a person whose whereabouts is unknown, the court must name an alternate beneficiary for the distributee's share. Should the distributee fail to claim the share within three years after the date of the order, the distributee would be presumed to have predeceased the decedent for purposes of distribution, and the alternate beneficiary would be entitled to that share. This procedure would effectuate the presumed intent of a decedent that the decedent's property go to the decedent's beneficiaries, rather than escheat to the state.

Liability of Property Passing to Surviving Spouse for Debts of Decedent

Under existing law, if a surviving spouse takes property of the decedent without probate, the decedent's creditors may recover against the surviving spouse for their claims. The proposed legislation provides another option that would enable the parties to avoid multiple actions where there are numerous creditors. The proposed law would make available the existing Probate Code procedure (Sections 13560-13564) for discharge of spousal liability through an estate proceeding.

This recommendation was prepared pursuant to Resolution Chapter 81 of the Statutes of 1999.

PROBATE LAW REVISIONS

This recommendation addresses two problems in California probate law.

Alternate Beneficiary for Unclaimed Distribution

It may not be possible to deliver an inheritance to a probate distributee because the person's whereabouts is unknown. In that case, the personal representative may obtain discharge by depositing the property with the county treasurer in the name of the distributee.¹ The distributee may claim the property by petitioning the court that ordered the distribution.² If the property remains unclaimed, the county turns it over to the state treasurer or controller,³ where it is treated in the same manner as other unclaimed property delivered to the state.⁴

The Law Revision Commission in 1990 circulated a tentative recommendation to require the court to name an alternate beneficiary if the whereabouts of a distributee is unknown. Under that proposal, the alternate beneficiary would be entitled to property that is unclaimed by the distributee after three years.

The 1990 proposal received widespread approval. However, the Commission made no final recommendation on the matter at that time due to the possibility that the proposal could result in a small revenue loss to the state during a period when the state needed every available resource.⁵ The state's finances have improved since then, and the Commission has further refined the concept in response to comments received.

When a distributee cannot be found, a decedent's presumptive intent is that the property go to another beneficiary, rather than to the state through its escheat process. This objective could be accomplished by having the order of distribution name an alternate beneficiary who takes if the property is not claimed by the distributee.

The Commission recommends that, if a distributee's whereabouts is unknown, the order of distribution should name alternate beneficiaries and the share to which each is entitled. The alternate beneficiaries and their shares are determined as if the distributee had predeceased the decedent. The alternate beneficiaries would be entitled to the distributee's share if the distributee fails to claim it for a period of three years after the order of distribution.

1. Prob. Code § 11850.

2. Prob. Code § 11854.

3. Code Civ. Proc. § 1444.

4. Code Civ. Proc. § 1310 *et seq.*

5. See First Supplement to Memorandum 90-93 (Sept. 5, 1990) (on file with California Law Revision Commission).

Liability of Property Passing to Surviving Spouse for Debts of Decedent

Existing law provides a procedure for court determination of property passing to a surviving spouse without probate.⁶ Such a court order is “conclusive on all persons.”⁷

Although the court order is conclusive as to title of the property in the surviving spouse, it does not defeat the rights of the decedent’s creditors. Creditors may recover directly from the surviving spouse.⁸

The procedure for direct action by a creditor against the surviving spouse requires independent action of each creditor. A simpler and more economical procedure where there are multiple creditors would be to process creditors’ claims through the decedent’s estate, if an estate proceeding is commenced.

There already exists a procedure under the Probate Code for restoring to the decedent’s estate property held by the surviving spouse.⁹ Under this procedure, the surviving spouse returns property that remains in the surviving spouse’s possession; otherwise the liability of the surviving spouse is limited to its value.

It would be a simple matter to incorporate this procedure in the statute for court determination of property passing to a surviving spouse. This would provide a useful alternative to individual collection efforts by creditors against the surviving spouse. The Commission recommends that the Probate Code be adjusted to accomplish this.

⁶. Prob. Code §§ 13650-13660.

⁷. Prob. Code § 13657.

⁸. Prob. Code §§ 13550, 13551; Barnum, *Summary Administration*, in 1 California Decedent Estate Practice § 5.41 (Cal. Cont. Ed. Bar, May 1998 Update).

⁹. Prob. Code §§ 13560-13564.

PROPOSED LEGISLATION

1 **Prob. Code § 11603 (amended). Order for distribution**

2 SECTION 1. Section 11603 of the Probate Code is amended to read:

3 11603. (a) If the court determines that the requirements for distribution are
4 satisfied, the court shall order distribution of the decedent's estate, or such portion
5 as the court directs, to the persons entitled thereto.

6 (b) The order shall:

7 (1) Name the distributees and the share to which each is entitled.

8 (2) Provide that property distributed subject to a limitation or condition,
9 including, but not limited to, an option granted under Chapter 16 (commencing
10 with Section 9960) of Part 5, is distributed to the distributees subject to the terms
11 of the limitation or condition.

12 (c) If the whereabouts of a distributee is unknown, the order shall name alternate
13 beneficiaries and the share to which each is entitled. The alternate beneficiaries
14 shall be the persons who would be entitled under the decedent's will or under the
15 laws of intestate succession if the distributee had predeceased the decedent. If the
16 distributee does not claim the distributee's share within three years after the date
17 of the order, the distributee is deemed to have predeceased the decedent for the
18 purpose of this section and the alternate beneficiaries are entitled to the
19 distributee's share as provided in the order.

20 **Comment.** Section 11603 is amended to add subdivision (c). In cases to which subdivision (c)
21 applies, the personal representative may deposit the property with the county treasurer. Section
22 11850. For money, no court order is required for the deposit. For other personal property, a court
23 order is required. Section 11851. A person may claim the money or other personal property on
24 deposit in the county treasury by filing a petition with the court. Section 11854.

25 In a testate estate, the court determines the alternate beneficiaries under the decedent's will and
26 applicable statutes. If the distributee is kindred of the testator or kindred of a surviving, deceased,
27 or former spouse of the testator, the antilapse statute applies (Section 6147), and the alternate
28 beneficiaries are the issue of the missing distributee.

29 In an intestate estate, the court determines the alternate beneficiaries under the laws of intestate
30 succession. See Sections 6400-6414.

31 **Prob. Code § 13657 (amended). Effect of court order**

32 SEC. 2. Section 13657 of the Probate Code is amended to read:

33 13657. Upon becoming final, an order under Section 13656 (1) determining that
34 property is property passing to the surviving spouse or (2) confirming the
35 ownership of the surviving spouse of property belonging to the surviving spouse
36 under Section 100 or 101 shall be conclusive on all persons, whether or not they
37 are in being, subject to Chapter 3.5 (commencing with Section 13560) (liability for
38 decedent's property) .

39 **Comment.** Section 13657 is amended to incorporate Sections 13560-13564, providing for
40 restitution of the property (or its value) by the surviving spouse.