

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

Alternate Beneficiaries for Unclaimed Distribution

April 1990

This tentative recommendation is being distributed so interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Comments sent to the Commission are a public record, and will be considered at a public meeting of the Commission. 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 it should be revised.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN JULY 1, 1990.

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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STATE OF CALIFORNIA

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Letter of Transmittal

This recommendation requires the court to name an alternate beneficiary for a distributive share of a decedent's estate when the identity of the primary distributee is unknown, or when the distributee's identity is known but whereabouts is unknown. If the primary distributee does not claim the share within three years from the date of the order, the alternate beneficiary named in the order may claim the share.

This recommendation is made pursuant to Resolution Chapter 37 of the Statutes of 1980.

2 ALTERNATE BENEFICIARIES FOR UNCLAIMED DISTRIBUTION

RECOMMENDATION

If the probate court orders distribution to a person whose identity is known but whose whereabouts is unknown, the personal representative may deposit the property with the county treasurer.¹ The distributee may claim the property by petitioning the probate court which ordered the distribution.² If the property is unclaimed, the county ultimately turns it over to the state.³

If the distributee's identity is unknown, the probate court orders distribution directly to the state.⁴ After the property is turned over to the state, a claimant has five years to claim it. After five years, the property belongs to the state.⁵

When a distributee cannot be found, most testators would prefer to have the property go to an alternate taker rather than escheat to the state. This could be accomplished by having the order of distribution name an alternate taker or takers if the property is not claimed by the primary distributee. If neither the primary nor alternate distributee claims the property within five years, it will escheat to the state.

The Commission recommends that, if the identity of a named distributee is unknown, or if the distributee's identity is known but the distributee's whereabouts is unknown, the court's order of distribution shall:

(1) Provide that if the distributee does not claim the distributee's share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent for this purpose.

(2) Name the distributees and the share to which each is entitled if the primary distributee does not claim the share within the three-year period.

1. Prob. Code § 11850.

2. Prob. Code § 11854.

3. Code Civ. Proc. § 1444.

4. Prob. Code § 11900.

5. Prob. Code § 11903.

PROPOSED LEGISLATION

Probate Code § 11603 (amended). Order for distribution

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

(b) The order shall:

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

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

(c) If the identity of a distributee is unknown, or if the distributee's identity is known but the distributee's whereabouts is unknown, the order shall:

(1) Provide that if the distributee does not claim the distributee's share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent for the purpose of this section.

(2) Name the distributees and the share to which each is entitled if the primary distributee does not claim the primary distributee's share within the time provided in paragraph (1).

Comment. Section 11603 is amended to add subdivision (c). Under subdivision (c), a distributee whose identity or whereabouts is unknown has three years within which to claim the distributee's share. If the distributee fails to do so, the alternate distributees have an additional two years to claim their shares before the property will escheat to the state. See Section 11903.

Note. Is the proposed three-year period for the primary distributee to claim his or her share too short? Should it be four years?