

STATE OF CALIFORNIA
California Law Revision Commission

TENTATIVE RECOMMENDATION

relating to

PROBATE LAW AND PROCEDURE

INVENTORY AND APPRAISAL

January 1987

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 considered when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature in 1987. 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 FEBRUARY 23, 1987.

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, Suite D-2
Palo Alto, CA 94303-4739

THE CALIFORNIA LAW REVISION COMMISSION

COMMISSION MEMBERS

ARTHUR K. MARSHALL
Chairperson

ANN E. STODDEN
Vice Chairperson

ROGER ARNEBERGH
Member

BION M. GREGORY
Member

ELIHU HARRIS
Member of Assembly

BILL LOCKYER
Member of Senate

EDWIN K. MARZEC
Member

TIM PAONE
Member

FORREST PLANT
Member

VAUGHN R. WALKER
Member

COMMISSION STAFF

Legal

JOHN H. DEMOULLY
Executive Secretary

NATHANIEL STERLING
Assistant Executive Secretary

ROBERT J. MURPHY III
Staff Counsel

STAN G. ULRICH
Staff Counsel

Administrative-Secretarial

DIANNE H. DIENSTEIN
Administrative Assistant

EUGENIA AYALA
Word Processing Technician

VICTORIA V. MATIAS
Word Processing Technician

CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2

PALO ALTO, CA 94303-4739

(415) 494-1335



January 15, 1987

LETTER OF TRANSMITTAL

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The ultimate goal is to submit a new code to the Legislature to replace the existing Probate Code.

Pending preparation of the entire new code, however, some revisions will be proposed in the existing Probate Code. This tentative recommendation sets forth the Commission's tentative conclusions relating to inventory and appraisal, which would supersede Probate Code Sections 600-615 and 1300-1313.

The explanatory text of this tentative recommendation indicates the background of this proposal and indicates the principal revisions it would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you will find a reference to other parts of the new code that are still being prepared and are not yet available.

A comment follows each section of the proposed legislation. The comment gives the source of the section and indicates the nature of the changes the section would make in existing law.

Comments showing the disposition of each section of existing law that would be repealed in the proposed legislation can be found at the end of this tentative recommendation.

TENTATIVE RECOMMENDATION
Relating to
INVENTORY AND APPRAISAL

BACKGROUND

The major changes made by the new code affecting the inventory and appraisal relate to the role of the probate referee.

The 1982 legislation governing probate referees¹ made specific reference to the California Law Revision Commission study of the administration of estates of decedents, and directed that the study be monitored by the appropriate legislative policy committees.² The Commission has devoted substantial resources to investigating the functioning of the probate referee system, including reviewing material from legislative hearings concerning probate referees, surveying inventory and appraisal systems in other jurisdictions, and considering the views of the probate bar (including the State Bar, Los Angeles County Bar, Beverly Hills Bar, and other bar associations), as well as communications from many interested individuals and groups (including the California Probate Referees' Association, California Bankers Association, California Appraisers Council, and American Institute of Real Estate Appraisers). The Commission has also allocated substantial public meeting time to presentations by interested persons.

In addition, the Commission distributed widely throughout the probate community a questionnaire concerning the functioning of the probate referee system and the need for reforms. The Commission received more than 100 completed questionnaire responses, including group responses from a number of probate bar associations, and

1. Prob. Code §§ 1300-1313, enacted by 1982 Cal. Stat. ch. 1535, § 13.

2. Prob. Code § 1313.

responses from judges, court commissioners, public administrators, and practicing lawyers. Responses came from persons in 20 counties, both rural and urban.

The Commission has taken into account this substantial volume of information in developing the following recommendations for changes in the role of the probate referee in administration of decedents' estates.

RETENTION OF PROBATE REFEREE

The Commission considered removing the probate referee from decedent estate administration entirely, in reliance on appraisal by the personal representative. It has been argued that this would save money for most estates by eliminating the probate referee's fees and would simplify estate administration by eliminating an unneeded third party, with its attendant delays, from the process.

The Commission's investigation reveals that the cost to the estate of the probate referee appraisal is relatively small. The referee's fee is a statutory commission of one tenth of one percent of the value of the estate, plus actual expenses.³ This costs the estate substantially less than an independent appraisal by a private appraiser where such an appraisal is needed for tax or other reasons, and is one of the smaller costs associated with probate.

If an appraisal is not otherwise needed, however, the probate referee's fee is an unnecessary cost to the estate. The Commission recommends, below, a number of changes directed at this problem, relating to assets that may be appraised by the personal representative and procedures for waiver of a probate referee appraisal and reduction of fees.

The Commission's investigation also reveals that the probate referee's involvement causes little complexity or delay in the ordinary case. The probate referee's appraisal is fairly expeditious; 15 days is a typical time for the appraisal after delivery of the inventory by

3. Prob. Code § 609. The commission is subject to a statutory maximum of \$10,000 and minimum of \$75.

the personal representative. Usually, any delay caused is not due to the referee's appraisal but to time spent by the personal representative in preparing the inventory.

There are cases in which a particular probate referee is dilatory or not performing up to standards. The Commission recommends, below, procedures to force expeditious appraisals in such cases, including sanctions against and procedures for removal of inadequate probate referees.

The probate bar generally believes the probate referee works efficiently and expedites and facilitates the probate process in the usual case. Most judges and practitioners think the referee provides a useful and ordinarily high quality service at modest cost to the estate, and that the referee system should be retained. Problems in the system should be resolved by attacking the problems directly, not by scrapping what is a basically sound system. The Commission concurs with these views, and recommends the following changes to cure problems in the probate referee system.

ASSETS APPRAISED BY REFEREE

In some estates the appraisal of assets is simple and does not call for an appraisal expert such as a probate referee. These are estates in which most assets are liquid and easily valued, and could well be appraised by the personal representative without resort to services of the probate referee.

Existing law recognizes this situation by permitting the personal representative to appraise bank accounts, lump-sum insurance payments, cash accounts, and a few other liquid assets.⁴ The new code expands these items to include money market accounts, brokerage cash accounts, and refund checks issued after the decedent's death.

One area the Commission has examined closely is the appraisal of publicly traded stock listed on a national exchange. Although it appears that the personal representative rather than the probate referee might properly appraise such assets, the Commission does not

4. Prob. Code § 605.

recommend that this be done as a matter of course. The economy of scale that enables low-cost probate referee appraisals in the ordinary case would be substantially impaired by removing publicly traded stock as a routine matter. In addition, a major reason the probate referee system works efficiently is that the referee simply appraises all non-cash assets *en masse* and cheaply, without the time and expense of making distinctions between what particular items are and are not subject to referee appraisal. The savings achieved by attempting to distinguish among the many varieties of stock are not significant compared to the procedural costs involved, and could be counterproductive in many cases. Finally, experience has shown that appraisals of publicly traded and listed stock by inexperienced persons are frequently inaccurate, due to such problems as value fluctuations on the date of death, failure to take into account x-dividend dates, and misidentification of the class of stock.

The Commission believes a better approach to appraisal of stock of all kinds, whether publicly traded or closely held, is to require as a matter of course that the referee be the appraiser, subject to waiver for good cause. This is existing law,⁵ and appears to work well in the ordinary case. In the unusual case, such as where the only major asset is stock in a difficult to value family corporation, it may be appropriate to waive the probate referee or to refer the matter to an independent expert for appraisal.⁶

WAIVER AND RELATED MATTERS

The Commission has found the existing procedure for waiver of the probate referee in appropriate cases to be basically sound. The one substantial revision in the waiver procedure made by the new code is to require that a waiver be made before the inventory is delivered to the probate referee. This will expedite administration by encouraging prompt action by the personal representative and avoid having the probate referee invest substantial work on an appraisal only to have the appraisal later waived.

5. Prob. Code § 605.

6. See discussion under "Waiver and Related Matters" *infra*.

The new code supplements the waiver procedure by a provision to permit a unique, unusual, or special item of tangible personal property to be appraised by a qualified independent expert. This would enable the personal representative to avoid appraisal by the probate referee and to select the appraiser in a case where there is need for a special expert. The independent appraisal would be subject to review by the probate referee, and the referee's fees would be subject to reduction or waiver by negotiation with the personal representative or, if they are unable to agree, by the court.

SELECTION AND REMOVAL OF PROBATE REFEREE

Although most people who work with probate referees are satisfied with the operation of the system, there are some instances of dissatisfaction. The Commission has concluded that existing remedies for incompetent or otherwise inadequate referees are not sufficient,⁷ and the new code supplements the existing remedies.

Initially, the new code enables the personal representative to avoid appointment of a probate referee known to provide poor service by application to the court to appoint some other referee. The new code makes clear that the court has authority and discretion not to designate a particular probate referee, and need not designate a referee merely because that referee happens to be next in rotation on a panel.

The new code also enables the personal representative to select a particular probate referee, to a limited extent. This authority is limited in order to avoid favoritism and to prevent influencing the appraisal through a known bias of the referee. However, selection of a particular probate referee may be appropriate in some situations where, for example, the same referee has recently appraised the same property or will be making related appraisals of the same property in another proceeding. Selection of a particular referee by the personal representative is subject to court discretion and a showing of good cause by the personal representative.

7. Existing remedies are generally administered by the State Controller. Prob. Code § 1308.

Where a referee has already been appointed, the new code provides two new removal procedures. First, the personal representative may remove the first referee appointed as a matter of right, without the need for a showing of cause. This is similar to a peremptory challenge of the first judge appointed, and should be an expeditious and effective remedy to ensure the competence of probate referees (by making incompetence easily avoided). Second, the personal representative may seek removal by the court for cause. Cause in this context includes incompetence and undue delay. This will supplement the State Controller's removal authority with local control over appointments in individual cases.

TIME FOR APPRAISAL

The probate referee's appraisal is ordinarily made expeditiously and causes little delay in probate. This is not always the case, however, and the new code adds provisions to ensure that all probate referee appraisals are completed quickly.

The new code creates a statutory duty on the probate referee to appraise the property promptly and with reasonable diligence. The code does not set a specific standard, since the time required for the appraisal may vary with the size, character, and difficulty of assets in the estate. The Commission is informed that the current norm is 15 days after delivery of the inventory and other information necessary for the appraisal.

Under the new code, if 90 days have elapsed since delivery of the inventory and the probate referee has not returned the appraisal, the probate referee must report the status of the appraisal showing why the property has not been appraised and estimating the time needed to complete the appraisal.⁸ The report is filed with the court and delivered to the personal representative, who may have the report set for hearing. Actions the court may take for a dilatory referee include reduction of fees and removal.

It is current practice for some probate referees to withhold delivery of the appraisal, even though completed, until their fees have been paid. This is inappropriate because it delays probate and, in an illiquid estate, it may make it impossible to proceed since payment

must come from proceeds of sale of appraised property. The new code prohibits a probate referee from withholding an appraisal until payment, but also makes clear that the probate referee's fees are an expense of administration, included in the highest statutory priority for payment in the administration proceedings.⁹

JUSTIFICATION OF APPRAISAL

If the probate referee's appraisal is questioned, there is no easy way to obtain the appraisal data used by the probate referee or for supporting the appraisal. The new code takes a number of steps to remedy this problem.

On demand by the personal representative or the beneficiary of property, the probate referee must provide any appraisal report or backup data concerning the property in the referee's files. This information must be provided without charge as part of the referee's regular services.

The referee may also be called upon to justify the appraisal at a hearing for a tax audit or otherwise. Because of the substantial time and effort that may be involved in this situation, the probate referee may be entitled to an additional fee, to be negotiated between the referee and person requiring the justification or, if they are unable to agree, to be fixed by the court.

8. This is analogous to the report made by the personal representative in the event of delay in closing the estate. See Prob. Code § 1025.5. The 90-day period was selected in recognition of the fact that in many cases it takes at least 60 days for the probate referee to obtain necessary appraisal information from the personal representative where the information has not been delivered with the inventory.

In this connection, the new code extends the time within which the personal representative must file the inventory and appraisal from three months to four. See Prob. Code § 600. The four month period is more realistic under current conditions, and is consistent with the 90 day limit for the probate referee. For uniformity, the time for filing a supplemental inventory and appraisal is also extended to four months. See Prob. Code § 611.

9. See Prob. Code § 950.

These two remedies should be sufficient where a question concerning the appraisal arises within a shortly after the appraisal is made. However, existing law does not clearly require record-keeping, so that if an audit or other question arises later, the referee's files may no longer be available. The new code addresses this problem by requiring the referee to offer the files to the personal representative. If the personal representative does not request the files within three years, the files may be destroyed.

DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

- § 400. Appointment by Controller
- § 401. Qualifications for appointment
- § 402. Qualification examination
- § 403. Term of office of probate referee
- § 404. Standards for probate referee
- § 405. Termination of authority
- § 406. Political activities of probate referee

CHAPTER 2. POWERS OF PROBATE REFEREE

- § 450. General powers
- § 451. Compelling appearance
- § 452. Examination, testimony, and production of documents
- § 453. Protective orders and enforcement

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

- § 8800. Inventory and appraisal required
- § 8801. Supplemental inventory and appraisal
- § 8802. Form of inventory and appraisal
- § 8803. Notice of filing of inventory and appraisal
- § 8804. Objection to appraisal
- § 8805. Failure to timely file inventory and appraisal

CHAPTER 2. INVENTORY

Article 1. General Provisions

- § 8850. Contents of inventory
- § 8851. Discharge or devise of claims
- § 8852. Oath of personal representative

Article 2. Discovery of Property of Decedent

- § 8870. Subpoena to appear and be examined concerning decedent's property
- § 8871. Examination
- § 8872. Subpoena to appear and account
- § 8873. Wrongful taking, concealment, or disposition of property in estate

CHAPTER 3. APPRAISAL

Article 1. Procedure

- § 8900. Appraisal by personal representative, probate referee, and independent expert
- § 8901. Appraisal by personal representative

- § 8902. Appraisal by probate referee
- § 8903. Waiver of appraisal by probate referee
- § 8904. Appraisal by independent expert
- § 8905. Verification of appraisal
- § 8906. Fee for appraisal by personal representative
- § 8907. Appraisal report, backup data, and justification of appraisal
- § 8908. Retention of records by probate referee

Article 2. Designation and Removal of Probate Referee

- § 8920. Designation by court
- § 8921. Designation at request of personal representative
- § 8922. Discretion not to designate person as probate referee
- § 8923. Disqualification of probate referee
- § 8924. Removal of probate referee

Article 3. Time For Probate Referee Appraisal

- § 8940. Time required for appraisal or status report
- § 8941. Hearing and order

Article 4. Commission and Expenses of Probate Referee

- § 8960. Payment of commission and expenses
- § 8961. Amount of commission and expenses
- § 8962. Maximum and minimum commissions
- § 8963. Division of commission between referees

DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

§ 400. Appointment by Controller

400. (a) The State Controller shall appoint at least one person in each county to act as a probate referee for the county.

(b) If there are fewer than three regularly qualified applicants to serve in a county, the State Controller may designate a probate referee from another county or, in the event there is no regularly qualified applicant, make an interim appointment, to serve until the vacancy has been filled by a regularly qualified applicant.

Comment. Subdivision (a) of Section 400 continues a portion of the first sentence of the first paragraph of former Probate Code Section 1305 without change. Subdivision (b) restates the third sentence of the first paragraph without substantive change.

§ 401. Qualifications for appointment

401. (a) Appointment shall be from among persons passing a qualification examination administered by the State Personnel Board. A person who passes the examination is eligible for appointment for a period of five years from the date of the examination.

(b) Appointment shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation.

Comment. Subdivision (a) of Section 401 restates a portion of the first sentence of the first paragraph and the fifth sentence of the second paragraph of former Probate Code Section 1305 without substantive change. Subdivision (b) continues the second sentence of the first paragraph of former Probate Code Section 1305 without change.

§ 402. Qualification examination

402. (a) The qualification examination for applicants for appointment to act as a probate referee shall be held at times and places within the state determined by the State Controller.

(b) The State Controller shall contract with the State Personnel Board to administer the qualification examination. Administration of the examination shall include:

- (1) Development of standards for passage of the examination.
- (2) Preparation of examination questions.
- (3) Giving the examination.
- (4) Scoring the examination.

(c) Each applicant shall pay a fee established by the State Personnel Board for taking the qualification examination. The State Personnel Board shall transmit to the State Controller a list of candidates who have received a passing score in the examination. The list is a public record.

Comment. Section 402 restates former Probate Code Section 1306 without substantive change.

§ 403. Term of office of probate referee

403. (a) The term of office of a probate referee is four years, expiring June 30. A person appointed to act as a probate referee is eligible for reappointment for a period of five years from the date of expiration of the term of office.

(b) If the State Controller increases the number of probate referees in a county, the State Controller shall stagger the terms of the new appointees so that one-quarter or as close to one-quarter as possible of the terms of the probate referees in that county expire on June 30 of each succeeding year.

Comment. Section 403 restates the second, third, and sixth sentences of the second paragraph of former Probate Code Section 1305, with the addition that a probate referee's eligibility for reappointment lasts until five years after expiration of the referee's term of office.

§ 404. Standards for probate referee

404. (a) The State Controller may establish and amend standards of training, performance, and ethics of probate referees. The standards are a public record.

(b) The State Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training, performance, or ethics established under subdivision (a). The State Controller may revoke an appointment under this subdivision without notice or a hearing, but the revocation is subject to review by writ of mandate to a court of competent jurisdiction.

Comment. Subdivision (a) of Section 404 restates former Probate Code Section 1307 without substantive change. Subdivision (b) restates former Section 1308(a) without substantive change.

§ 405. Termination of authority

405. (a) The authority of a person to act as a probate referee ceases immediately upon expiration of the person's term of office, revocation of the person's appointment, or other termination pursuant to law.

(b) Upon cessation of authority of a person to act as a probate referee, the court shall reassign any estate for which the person had been designated as probate referee.

Comment. Subdivision (a) of Section 405 restates former Probate Code Section 1309 without substantive change. Subdivision (b) codifies existing practice. Other termination pursuant to law includes resignation.

§ 406. Political activities of probate referee

406. (a) A probate referee or any person who is an applicant for or seeking appointment or reappointment to act as a probate referee shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner concerned in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, or contribution to any party, incumbent, or candidate exceeding two hundred dollars (\$200) in any one year for any campaign for any partisan public office of this state.

(2) Notwithstanding paragraph (1), any assessment, subscription, contribution, or political service for any campaign for the office of State Controller.

(b) A violation of this section is a misdemeanor, and the State Controller shall revoke the appointment of a probate referee who violates this section.

(c) The State Controller may not appoint or reappoint as a probate referee any person who, within the two-year period preceding the date of the appointment or reappointment, violates subdivision (a)(1), or who violates subdivision (a)(2), and any such appointment or reappointment is void. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.

Comment. Subdivisions (a) and (b) of Section 406 restate former Probate Code Section 1311, with the addition of references to incumbency and reappointment. The two hundred dollar limitation of paragraph (a)(1) does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited by paragraph (a)(2).

Subdivision (c) restates former Probate Code Section 1312, with the added requirement of removal from office. The transitional provision is omitted because it is no longer necessary.

CHAPTER 2. POWERS OF PROBATE REFEREE

§ 450. General powers

450. Upon designation by the court, the probate referee has all the powers of a referee of the superior court and all other powers provided in this chapter.

Comment. Section 450 restates subdivision (b) of former Probate Code Section 1301 without substantive change.

§ 451. Compelling appearance

451. For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, an interested person, or any other person the referee has reason to believe has knowledge of the property.

Comment. Section 451 restates subdivision (a) of former Probate Code Section 1301 and former Probate Code Section 1302, with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates.

CROSS-REFERENCES

Definitions

Interested person § 48
Person § 56
Personal representative § 58
Property § 62

§ 452. Examination, testimony, and production of documents

452. The probate referee may examine and take the testimony under oath of a person appearing before the referee, or require, and issue a subpoena to compel, the person to produce any document in the person's possession or control, concerning the value of property in the estate.

Comment. Section 452 restates former Probate Code Section 1303, with the addition of the reference to production of documents. See Section 453 (protective orders and enforcement).

CROSS-REFERENCES

Definitions

Person § 56
Property § 62

§ 453. Protective orders and enforcement

453. (a) On petition of a person required to appear before the probate referee pursuant to this chapter, the court may make a protective order to protect the person from annoyance, embarrassment, or oppression. The petitioner shall mail notice of the hearing on the petition to the probate referee at least 15 days before the date set for the hearing.

(b) On petition of the probate referee, the court may make an order to show cause why a person who is required, but fails, to appear before the probate referee pursuant to this chapter, should not be compelled to do so. The probate referee shall mail notice of the hearing on the petition to the person at least 15 days before the date set for the hearing.

Comment. Subdivision (a) of Section 453 is drawn from Code of Civil Procedure Section 2037.8. Subdivision (b) is drawn from Code of Civil Procedure Section 2034.

CROSS-REFERENCES

Definitions

Person § 56

Mailed notice § 1215

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

§ 8800. Inventory and appraisal required

8800. Within four months after letters are issued to a general personal representative, or within a further time allowed by the court for reasonable cause, the personal representative shall file with the clerk an inventory and appraisal of the fair market value at the time of the decedent's death of the property to be administered in the decedent's estate.

Comment. Section 8800 restates the first portion of the first sentence of former Probate Code Section 600, extending the time for filing the inventory and appraisal from three months to four. See also Section 7061 (actions in chambers). Section 8800 also generalizes the "fair market value" standard from various places in former law.

The inventory and appraisal procedure provided in this part applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 8801. Supplemental inventory and appraisal

8801. If after the inventory is filed the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in the inventory, the personal

representative shall file a supplemental inventory and appraisal of the property in the manner prescribed for the original inventory and appraisal. The supplemental inventory and appraisal shall be filed within four months after the personal representative acquires knowledge of the property.

Comment. Section 8801 restates former Probate Code Section 611, extending the two month time for filing to four months. For enforcement of this requirement, see Section 8805 (failure to timely file inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8802. Form of inventory and appraisal

8802. The inventory and appraisal shall be in the form of a separate listing of each item with the value of the item opposite the item.

Comment. Section 8802 restates the fifth sentence of former Probate Code Section 600. The value must be the fair market value at the time of the decedent's death. Section 8800 (inventory and appraisal required).

§ 8803. Notice of filing of inventory and appraisal

8803. Upon the filing of the inventory and appraisal, the personal representative shall, pursuant to Section 1252, mail a copy to each person who has requested special notice.

Comment. Section 8803 is new.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Request for special notice § 1250

§ 8804. Objection to appraisal

8804. (a) At any time before entry of the order for final distribution of the estate, an interested person may file with the court a written objection to the appraisal.

(b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the date set for the hearing.

(d) The person objecting to the appraisal has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders that appear appropriate. If the court determines the objection was filed without reasonable cause or good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the appraisal be made a charge against the person filing the objection.

Comment. Section 8804 restates former Probate Code Section 608.5, replacing the 10 day minimum hearing time with 15 days consistent with the general notice provisions and providing for an award of fees and costs in the event of a frivolous objection. It is drawn from former Probate Code Section 927 and from former Revenue and Taxation Code Sections 14510-14513. See also Sections 8907 (appraisal report, backup data, and justification of appraisal) and [927] (exceptions to account, including objection to appraisal). For objection to the inventory, other procedures are available. See, e.g., Section [851.5].

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Interested person § 48

Person § 56

Request for special notice § 1250

§ 8805. Failure to timely file inventory and appraisal

8805. If the personal representative negligently or intentionally fails to file the inventory and appraisal within the time allowed under Section 8800:

(a) The court may compel the personal representative to file the inventory and appraisal pursuant to the procedure prescribed in Part 8 (commencing with Section 10900) to compel a personal representative to file an account.

(b) The court may remove the personal representative from office.

(c) The personal representative is liable for injury to the estate or to an interested person arising from the failure, including attorney's fees in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative.

Comment. Section 8805 restates former Probate Code Section 610 and a portion of former Probate Code Section 611, codifying the case law rule that the statute applies to failure to timely file the appraisal as well as failure to timely file the inventory. Section 8805 is limited to negligent or intentional noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file the appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3.

Subdivision (a) is new.

Subdivision (b) provides for removal as an independent sanction. For the removal procedure, see Article 6 (commencing with Section 8500) of Chapter 4 of Part 2. This supplements the removal sanction that is part of the procedure under subdivision (a) to compel a filing.

Under subdivision (c), liability for injury arising from the failure of the personal representative to timely file the inventory and appraisal includes attorney's fees incurred in proceedings to compel the filing. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 *et seq.*

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

CHAPTER 2. INVENTORY

Article 1. General Provisions

§ 8850. Contents of inventory

8850. (a) The inventory shall include all property to be administered in the decedent's estate.

(b) The inventory shall particularly specify the following property:

(1) Debts, bonds, mortgages, deeds of trust, notes, and other security for the payment of money to the decedent, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates.

(2) A statement of the interest of the decedent in a partnership in which the decedent was a member, appraised as a single item.

(3) An account of all money of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

Comment. Subdivisions (a) and (b) of Section 8850 restate the third and fourth sentences of former Probate Code Section 600 without substantive change. Subdivision (c) restates former Probate Code Section 601, with the addition of the reference to quasi-community property.

CROSS-REFERENCES

Definitions

Community property § 28
Personal representative § 58
Property § 62
Quasi-community property § 66

§ 8851. Discharge or devise of claims

8851. The discharge or devise in a will of any debt or demand of the testator against the executor or any other person is not valid against creditors of the testator, but is a specific devise of the debt or demand. The debt or demand shall be included in the inventory. If necessary, the debt or demand shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the debt or demand shall be distributed in the same manner and proportion as other specific devises.

Comment. Section 8851 restates former Probate Code Section 603 without substantive change.

CROSS-REFERENCES

Definitions

Devise § 32
Will § 88

§ 8852. Oath of personal representative

8852. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of all property to be administered in the decedent's estate that the personal representative has knowledge of, and particularly of money of the decedent and debts or demands of the decedent against the personal representative.

(b) The oath shall be endorsed upon or attached to the inventory.

Comment. Section 8852 restates former Probate Code Section 604 without substantive change. The requirement of an oath may be satisfied by a written affirmation. Code Civ. Proc § 2015.6.

CROSS-REFERENCES

Definitions

Personal representative § 58

Article 2. Discovery of Property of Decedent

§ 8870. Subpoena to appear and be examined concerning decedent's property

8870. (a) On petition by the personal representative or an interested person, the court may issue a subpoena to a person to appear before the court and be examined under oath concerning any of the following allegations:

(1) That the person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) That the person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.

(B) A claim of the decedent.

(C) A lost will of the decedent,

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a subpoena under this section.

(c) Disobedience of a subpoena issued pursuant to this section may be punished as a contempt of the court issuing the subpoena.

Comment. Subdivisions (a) and (b) of Section 8870 restate the first two sentences of former Probate Code Section 613, substituting a petition for a complaint and a subpoena for a citation. See also Section 7061 (actions in chambers).

Subdivision (c) supersedes the first sentence of former Probate Code Section 614. For general provisions governing issuance and enforcement of subpoenas, see Code Civ. Proc. § 1985 *et seq.* See also Section 1283 (rules of practice).

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Will § 88

Verification required § 1284

§ 8871. Examination

8871. (a) At the examination, interrogatories may be put to the person subpoenaed pursuant to Section 8870, and witnesses may be produced and examined on either side. All such interrogatories and answers shall be in writing, signed by the person examined, and filed with the court.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts to the personal representative.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses, including a reasonable attorney's fee, shall be charged against the petitioner or allowed out of the estate, in the discretion of the court.

Comment. Subdivisions (a) and (b) of Section 8871 restate the second, third, and fourth sentences of former Probate Code Section 614. Subdivision (c) supersedes the third sentence of former Probate Code Section 613. The court order of disclosure is enforceable in the same manner as other court orders. See, e.g., Code Civ. Proc. § 1209 (contempt); see also Section 1283 (rules of practice).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8872. Citation to appear and account

8872. (a) On petition by the personal representative, the court may issue a citation to a person who has possession or control of property in the decedent's estate to appear before the court and make an account under oath of the property and the person's actions with respect to the property.

(b) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

Comment. Section 8872 restates former Probate Code Section 615, substituting a petition for a complaint. See also Section 7061 (actions in chambers). The duty to account under this section includes both property entrusted to a person and property that comes into the person's possession, including money, accounts, and other property and papers. For general provisions governing issuance and enforcement of citations, see Sections 1240-1242.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 8873. Wrongful taking, concealment, or disposition of property in estate

8873. A person who has wrongfully taken, concealed, or disposed of property in the estate of the decedent is liable for twice the value of the property, recoverable in an action by the personal representative for the benefit of the estate.

Comment. Section 8873 restates former Probate Code Section 612 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

CHAPTER 3. APPRAISAL

Article 1. Procedure

§ 8900. Appraisal by personal representative, probate referee, and independent expert

8900. The appraisal of property in the inventory shall be made by the personal representative, probate referee, or independent expert as provided in this chapter.

Comment. Section 8900 restates the introductory clause of former Probate Code Section 605(a) with the addition of the reference to an independent expert. See Section 8904 (appraisal by independent expert). Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920). The appraisal is made of the fair market value of the property at the time of the decedent's death. See Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8901. Appraisal by personal representative

8901. The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value:

(a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued before the decedent's death that can be immediately converted to cash.

(b) Refund checks issued after the decedent's death, including tax and utility refunds.

(c) Accounts (as defined in Section 21) in financial institutions.

(d) Money market accounts and brokerage cash accounts.

(e) Proceeds of life and accident insurance policies and retirement plans payable on death in lump sum amounts.

Comment. Subdivisions (a), (c), and (e) of Section 8901 restate former Probate Code Section 605(a)(1) without substantive change.

The definition of "cash item" in subdivision (a) is consistent with existing practice. California Probate Referees' Ass'n, Probate Referees' Procedures Guide 9 (1976).

Subdivisions (b) and (d) are new. The personal representative may appraise an item listed in subdivision (b) or (d), as well as items listed in subdivisions (a), (c), and (e), only if its fair market value can be determined solely from its face without calculation or reference to other sources. See introductory clause of Section 8901.

CROSS-REFERENCES

Definitions

Account § 21

Financial institution § 40

Personal representative § 58

Property § 62

§ 8902. Appraisal by probate referee

8902. Except as otherwise provided by statute:

(a) The personal representative shall deliver the inventory to the probate referee designated by the court, together with necessary supporting data to enable the probate referee to make an appraisal of the property in the inventory.

(b) The probate referee shall appraise all property other than that appraised by the personal representative.

Comment. Subdivision (a) of Section 8902 codifies existing practice. A statutory exception to the duty to deliver an inventory to the probate referee occurs in the case of a waiver of appraisal by the probate referee. See Section 8903. The personal representative must furnish the referee such information as the referee requires concerning the assets appraised by the personal representative or to be appraised by the probate referee. See Sections 450-453 (powers of probate referee).

Subdivision (b) restates a portion of former Probate Code Section 605(a)(2). The probate referee may serve an appraisal function in areas outside of decedent estate administration. See Comment to Section 8800 (inventory and appraisal required). There are statutory exceptions to appraisal by the probate referee. See, e.g., Section 2610 (inventory and appraisal of conservatorship under Lanterman-Petris-Short Act). For waiver of the probate referee, see Section 8903. For appraisal by an independent expert, see Section 8904.

Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8903. Waiver of appraisal by probate referee

8903. (a) The court may, for good cause, waive appraisal by a probate referee in the manner provided in this section.

(b) The personal representative may apply for a waiver either in the petition for appointment of the personal representative or in a separate petition filed in the administration proceedings, but the petition may not be made later than the time the personal representative delivers the inventory to the probate referee. A copy of the proposed inventory and appraisal and a statement that sets forth the good cause that justifies the waiver shall be attached to the petition.

(c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. The personal representative shall mail a copy of the petition, a copy of the proposed inventory and appraisal, and notice of the hearing on the petition, to all of the following persons at least 15 days before the date set for the hearing:

(1) Devisees whose interest in the estate is affected by the waiver.

(2) Heirs in an intestate estate.

(3) The State of California if any portion of the estate is to escheat to it.

(4) Persons who have requested special notice under Section 1250.

(d) Notwithstanding Section 8901, if the petition is granted, the inventory and appraisal attached to the petition shall be filed pursuant to Section 8800.

Comment. Section 8903 restates former Probate Code Section 605(a)(2)(C) and 605(b), with changes to make clear that the application for waiver is made by petition, to specify the time within which the petition must be made, and to make clear that the inventory and appraisal attached to the petition is to be filed pursuant to Section 8800 (inventory and appraisal required).

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Letters § 52

Person § 56

Personal representative § 58

Property § 62

Mailed notice § 1215

Verification required § 1284

§ 8904. Appraisal by independent expert

8904. (a) A unique, unusual, or special item of tangible personal property may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item.

(b) Unless appraisal by a probate referee is waived, an appraisal of property pursuant to this section is subject to review by the probate referee. The personal representative and the probate referee may agree to a reduction or waiver of the commission of the probate referee as to the property. If the personal representative and the probate referee are unable to agree, the court shall determine the appropriate commission, if any.

Comment. Section 8904 is new.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8905. Verification of appraisal

8905. A person who appraises property, whether a personal representative, probate referee, or independent expert, shall sign the appraisal as to property appraised by that person, and shall take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability.

Comment. Section 8905 restates former Probate Code Section 608, with the inclusion of an independent appraisal expert. See Section 8904. The requirement of subscription of an oath may be satisfied by a written affirmation or a declaration under penalty of perjury. Code Civ. Proc §§ 2015.5-2015.6

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 8906. Fee for appraisal by personal representative

8906. Neither the personal representative nor the personal representative's attorney is entitled to receive compensation for extraordinary services by reason of appraising any property in the estate.

Comment. Section 8906 restates former Probate Code Section 605(c) and expands it to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate (for example where the probate referee is waived pursuant to Section 8903).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 8907. Appraisal report, backup data, and justification of appraisal

8907. A probate referee who appraises property in the estate shall, upon demand by the personal representative or by a beneficiary:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise an item of property. The probate referee shall not disclose any information that was acquired by the probate referee subject to a statutory provision for confidentiality. The probate referee shall provide the appraisal report or backup data without charge. The cost of providing the appraisal report or backup data shall not be allowed as an expense of appraisal but is included in the commission for services of the probate referee.

(b) Justify the appraisal of an item of property if the appraisal is contested, whether by objection pursuant to Section 8804, by tax audit, or otherwise. The probate referee may be entitled to an additional fee for services provided to justify the appraisal, to be agreed upon by the personal representative or beneficiary and referee. If the personal representative or beneficiary and the probate referee are unable to agree, the court shall determine what fee, if any, is appropriate.

Comment. Section 8907 is new. Backup data required pursuant to subdivision (a) might include, for example, a listing of comparable sales used in the appraisal. The determination of an appropriate fee under subdivision (b) will depend in part upon the quality of the appraisal and whether the contest of the appraisal is reasonable.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Personal representative § 58
Property § 62

§ 8908. Retention of records by probate referee

8908. A probate referee who appraises property in an estate shall retain possession of all appraisal reports and backup data used by the referee to appraise the property for a period of three years after the appraisal is filed. The probate referee shall, during the three year period, offer the personal representative the information used by the referee to appraise the property. Any information not requested by the personal representative may be destroyed at the end of the three year period without further notice.

Comment. Section 8908 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Property § 62

Article 2. Designation and Removal of Probate Referee

§ 8920. Designation by court

8920. The court shall designate the probate referee from among the persons appointed by the State Controller to act as a probate referee for the county. If there is no person available who is able to act or if the court does not designate a person appointed for the county, the court may designate a probate referee from another county.

Comment. Section 8920 restates a portion of former Probate Code Section 605(a)(2), and makes clear that the probate referee is designated from the panel appointed for the county by the State Controller. See Section 400 (appointment by Controller). Where there is no person able to act, whether because all are disqualified or removed or because there are an insufficient number appointed or or because the court elects not to designate a particular probate referee or otherwise, the court may appoint a probate referee from another county. This codifies existing practice. The designation of a probate referee may be made by the judge in chambers. Section 7061.

CROSS-REFERENCES

Definitions

Property § 62

§ 8921. Designation at request of personal representative

8921. The court may designate a person requested by the personal representative as probate referee, on a showing by the personal representative of good cause for the designation. The following circumstances are included within the meaning of good cause, as used in this section:

(a) The probate referee has recently appraised the same property that will be appraised in the administration proceeding.

(b) The probate referee will be making related appraisals in another proceeding.

(c) The probate referee has recently appraised similar property in another proceeding.

Comment. Section 8921 is new.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8922. Discretion not to designate person as probate referee

8922. The court has authority and discretion not to designate a particular person as probate referee even though appointed by the State Controller to act as a probate referee for the county.

Comment. Section 8922 is new. The court may, but is not required to, designate probate referees in rotation from the panel for the county, or may use any other system of designation. The court may refuse to designate a particular person as probate referee if experience with that person is unsatisfactory, if experience with that person's office or staff (including office or staff shared with other

probate referees) is generally unsatisfactory, or for other proper reasons in the court's discretion. Where there is no satisfactory probate referee for the county, or not a sufficient number of satisfactory probate referees for the county, the court may designate a probate referee from the panel appointed for another county. Section 8920 (designation by court).

§ 8923. Disqualification of probate referee

8923. The court may not designate as probate referee any of the following persons:

(a) The clerk or a deputy clerk.

(b) A partner or employee of the judge or commissioner who orders the designation.

(c) A person who is related to the judge or commissioner who orders the designation or the spouse of the judge or commissioner within the third degree, or who is married to a relative of the judge or commissioner within the third degree.

Comment. Section 8923 restates former Probate Code Section 606 without substantive change.

§ 8924. Removal of probate referee

8924. (a) The court shall remove the designated probate referee in any of the following circumstances:

(1) The personal representative shows cause, including incompetence or undue delay in making the appraisal, that in the opinion of the court warrants removal of the probate referee. The showing shall be made at a hearing on petition of the personal representative. The personal representative shall mail notice of the hearing on the petition shall be mailed to the probate referee at least 15 days before the date set for the hearing.

(2) The personal representative demands removal of the probate referee, regardless of cause. The demand shall be made by affidavit or declaration under penalty of perjury filed with the court and a copy mailed to the probate referee, and thereupon the court shall remove the probate referee without any further act or proof. Removal pursuant to this paragraph is a matter of right, but may be exercised only once in the administration of the estate and only before the personal representative delivers the inventory to the probate referee.

(3) Any other cause provided by statute.

(b) Upon removal of the probate referee, the court shall designate another probate referee in the manner prescribed in Section 8920.

Comment. Section 8924 is new. Other causes provided by statute for removal of a probate referee include failure to make a timely appraisal or report. See Section 8941 (hearing and order). If experience with all the probate referees in a particular office is unsatisfactory, a referee from that office can be removed pursuant to Section 8924 or designation of a referee from that office can be avoided pursuant to Section 8922 (discretion not to designate a person as probate referee).

CROSS-REFERENCES

Definitions

Personal representative § 58
Mailed notice § 1215
Verification required § 7203

Article 3. Time For Probate Referee Appraisal

§ 8940. Time required for appraisal or status report

8940. (a) The probate referee shall promptly and with reasonable diligence appraise the property in the inventory that the personal representative delivers to the referee.

(b) The probate referee shall, not later than 90 days after delivery of the inventory, do one of the following:

(1) Return the appraisal to the personal representative.

(2) Make a report of the status of the appraisal. The report shall show the reason why the property has not been appraised and an estimate of the time needed to complete the appraisal. The report shall be delivered to the personal representative and filed with the court.

Comment. Sections 8940 and 8941 are new. They parallel Sections 12200 to 12205 (time for closing estate). The personal representative must deliver an inventory together with supporting data to the probate referee. Section 8902 (appraisal by probate referee). Subdivision (a) of Section 8940 requires the probate referee to act promptly and diligently in making the appraisal, which in the ordinary case should occur well before the 90-day period provided in subdivision (b) has run. The 90-day period provided in subdivision (b) should be viewed as an unusually long period and not as the norm for accomplishing the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8941. Hearing and order

8941. (a) The court shall, on petition of the personal representative or probate referee, or may, on the court's own motion, hear the report of the status of the appraisal. Notice of the hearing shall be served on the personal representative and the probate referee by citation.

(b) If the probate referee does not make the report of the status of the appraisal within the time required by this article or prescribed by the court, the court shall, on petition of the personal representative or may, on its own motion, cite the probate referee to appear before the court and show the reason why the property has not been appraised.

(c) Upon the hearing, the court may order any of the following:

(1) That the appraisal be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced by an amount the court deems appropriate, regardless of whether the commission otherwise allowable under the provisions of Sections 8960 to 8963 would be reasonable compensation for the services rendered.

(4) That the personal representative be removed.

Comment. Sections 8940 and 8941 are new. They parallel Sections 12200 to 12205 (time for closing estate).

Reduction of the probate referee's commission under subdivision (c)(3) may be appropriate if the time taken was within the control of the referee and was not in the best interest of the estate or interested persons. In making such a determination, the court should take into account any previous action taken under this article as a result of the delay.

Removal of the personal representative under subdivision (c)(4) may be appropriate where the personal representative's failure to supply necessary information is hindering completion of the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Verification required § 7203

Article 4. Commission and Expenses of Probate Referee

§ 8960. Payment of commission and expenses

8960. (a) The commission and expenses provided by this article as compensation for the services of the probate referee shall be paid from the estate appraised by the referee.

(b) The probate referee may not withhold the appraisal until the commission and expenses are paid, but shall deliver the appraisal to the personal representative promptly upon completion.

(c) The commission and expenses of the probate referee are an expense of administration, entitled to the priority for payment provided by Section 11420, and shall be paid in the course of administration.

Comment. Subdivision (a) of Section 8960 restates a portion of the first sentence of the first paragraph of former Probate Code Section 609 without substantive change.

Subdivisions (b) and (c) are new. Section 11420 provides the highest priority for payment of expenses of administration, which take precedence over all other debts. A personal representative who fails to give the priority required by law to the commission and expenses of the probate referee is liable for the failure. Section [to be drafted] (liability of personal representative to administer estate according to law).

§ 8961. Amount of commission and expenses

8961. As compensation for services the probate referee shall receive all of the following:

(a) A commission of one-tenth of one percent of the total value of the property for each estate appraised, subject to Section 8962. The commission shall be computed excluding property appraised by the personal representative pursuant to Section 8901 and shall be reduced for property appraised by an independent expert to the extent required pursuant to Section 8904.

(b) Actual and necessary expenses allowed by the court for each estate appraised. The referee shall file with the inventory a verified account of the referee's expenses.

Comment. Section 8961 restates a portion of the first sentence and the second sentence of the first paragraph, and the second paragraph, of former Probate Code Section 609 without substantive change. The commission provided by this section is subject to a maximum and minimum pursuant to Section 8962 (maximum and minimum commissions).

CROSS-REFERENCES

Definitions

Property § 62

§ 8962. Maximum and minimum commissions

8962. (a) Notwithstanding Section 8961 and subject to subdivision (b), the commission of the probate referee shall in no event be less than seventy-five dollars (\$75) nor more than ten thousand dollars (\$10,000) for any estate appraised.

(b) Upon application of the probate referee and notice given as provided in Section 1220 and mailed to persons who have requested special notice, the court may allow a commission in excess of ten thousand dollars (\$10,000) if the court determines that the reasonable value of the referee's services exceeds that amount.

Comment. Section 8962 restates a portion of the first sentence of the first paragraph and the third paragraph of former Probate Code Section 609 with the addition of the provision for notice in the case of an increase in commission.

CROSS-REFERENCES

Definitions

Note. The reference to Section 1220 is to a provision proposed by the Commission to replace Section 1200.5. It requires 15 days mailed notice to the personal representative and persons who have appeared.

Special notice provisions will be conformed.

§ 8963. Division of commission between referees

8963. If more than one probate referee appraises property in the estate, each is entitled to the share of the commission agreed upon by the referees or, absent an agreement, that the court allows. In no case shall the total commission for all referees exceed the maximum commission that would be allowable for a single referee.

Comment. Section 8963 restates former Probate Code Section 609.5 without substantive change. Reference to division of expenses is omitted, since each referee is entitled to actual and necessary

expenses allowed by the court, regardless of the amount of the commission. It should be noted that the amount of the commission split by the referees may exceed the statutory maximum in a case where the court determines that the reasonable value of the services in the case exceeds the statutory amount. See Section 8962(b).

CROSS-REFERENCES

Definitions

Property § 62

COMMENTS TO REPEALED SECTIONS

CHAPTER 9. INVENTORY AND APPRAISEMENT

Probate Code § 600 (repealed)

Comment. The first portion of the first sentence of former Section 600 is restated in Estate and Trust Code Section 8800 (inventory and appraisal required) without substantive change. See also Estate and Trust Code Section 7061 (actions in chambers). The last portion of the first sentence is restated in Section (change in ownership statement) [to be drafted].

The second sentence is omitted because it no longer serves a useful purpose. The third and fourth sentences are restated in Estate and Trust Code Section 8850 (contents of inventory) without substantive change. The fifth sentence is restated in Estate and Trust Code Section 8802 (form of inventory and appraisal) without substantive change. See also Estate and Trust Code Section 8800 (inventory and appraisal required).

Probate Code § 601 (repealed)

Comment. Former Section 601 is restated in Estate and Trust Code Section 8850 (contents of inventory) without substantive change.

Probate Code § 602 (repealed)

Comment. Former Section 602 is continued in Section (appointment of personal representative without substantive change).

Probate Code § 603 (repealed)

Comment. Former Section 603 is restated in Estate and Trust Code Section 8851 (discharge or devise of claims) without substantive change.

Probate Code § 604 (repealed)

Comment. Former Section 604 is restated in Estate and Trust Code Section 8852 (oath of personal representative) without substantive change.

Probate Code § 605 (repealed)

Comment. The introductory portion of subdivision (a) of former Section 605 is superseded by Estate and Trust Code Section 8900 (appraisal by personal representative, probate referee, and independent expert). Subdivision (a)(1) is superseded by Estate and Trust Code Section 8901 (appraisal by personal representative). See also Estate and Trust Code Sections 40 ("financial institution" defined) and 8800 (inventory and appraisal required).

The introductory portion of subdivision (a)(2) is restated in Estate and Trust Code Sections 8902 (appraisal by probate referee) and 8920 (designation by court). Paragraphs (A) and (B) of subdivision (a)(2) are superseded by provisions of Division 8 (commencing with Section 13000) (disposition of estates without administration). Paragraph (C) of subdivision (a)(2) is restated in Estate and Trust Code Section 8903 (waiver of appraisal by probate referee) without substantive change.

Subdivision (a)(3) is restated in Estate and Trust Code Section 8903(b)-(d) (waiver of appraisal by probate referee), with clarifying changes.

Subdivision (b) is superseded by Estate and Trust Code Sections 450-453 (powers of probate referee). Subdivision (c) is restated in Estate and Trust Code Section 8906 (fee for appraisal by personal representative) and expanded to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate.

Probate Code § 606 (repealed)

Comment. Former Section 606 is restated in Estate and Trust Code Section 8923 (disqualification of probate referee) without substantive change.

Probate Code § 607 (repealed)

Comment. Former Section 607 is omitted; the procedure provided in the section was ignored in practice.

Probate Code § 608 (repealed)

Comment. Former Section 608 is restated in Estate and Trust Code Section 8905 (verification of appraisal), with the addition of an independent appraisal expert.

Probate Code § 608.5 (repealed)

Comment. Former Section 608.5 is restated in Estate and Trust Code Section 8804 (objection to inventory and appraisal), with the clarification that the procedure applies to the inventory as well as the appraisal.

Probate Code § 609 (repealed)

Comment. The first portion of the first sentence of the first paragraph of former Section 609 is restated in Estate and Trust Code Sections 8960 (payment of commission and expenses) and 8961 (amount of commission and expenses) without substantive change. The last portion of the first sentence is restated in Estate and Trust Code Section 8962 (maximum and minimum commissions) without substantive change. The second sentence is restated in Estate and Trust Code Section 8961 (amount of commission and expenses) without substantive change. The third sentence is omitted because it was an obsolete relic from the inheritance tax function of probate referees.

The second paragraph is restated in Estate and Trust Code Section 8961 (amount of commission and expenses) without substantive change. The third paragraph is restated in Estate and Trust Code Section 8962 (maximum and minimum commissions), with the addition of a provision for notice.

Probate Code § 609.5 (repealed)

Comment. Former Section 609.5 is restated in Estate and Trust Code Section 8963 (division of commission between referees) without substantive change.

Probate Code § 610 (repealed)

Comment. Former Section 610 is restated in Estate and Trust Code Section 8805 (failure to timely file inventory and appraisal), which makes clear that failure to timely file the appraisal is included within the statute. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

Probate Code § 611 (repealed)

Comment. Former Section 611 is restated in Estate and Trust Code Sections 8801 (supplemental inventory and appraisal) and 8805 (failure to timely file inventory and appraisal) without substantive change.

Probate Code § 612 (repealed)

Comment. Former Section 612 is restated in Estate and Trust Code Section 8873 (wrongful taking, concealment, or disposition of property in estate) without substantive change.

Probate Code § 613 (repealed)

Comment. The first two sentences of former Section 613 are restated in Estate and Trust Code Section 8870 (subpoena to appear and be examined concerning decedent's property), substituting a petition for a complaint and a subpoena for a citation. The third sentence is superseded by Estate and Trust Code Section 8871 (examination).

Probate Code § 614 (repealed)

Comment. The first sentence of former Section 614 is superseded by Section 8870(c) (subpoena to appear and be examined concerning decedent's property). The second, third, and fourth sentences are restated in Estate and Trust Code Section 8871 (examination).

Probate Code § 615 (repealed)

Comment. Former Section 615 is restated in Estate and Trust Code Section 8872 (subpoena to appear and account), substituting a petition for a complaint.

CHAPTER 23. PROBATE REFEREES

Probate Code § 1300 (repealed)

Comment. Former Section 1300 is omitted; it no longer serves a useful purpose.

Probate Code § 1301 (repealed)

Comment. Subdivision (a) of former Section 1301 is restated in Estate and Trust Code Section 451 (compelling appearance), with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates. Subdivision (b) is restated in Estate and Trust Code Section 450 (general powers) without substantive change.

Probate Code § 1302 (repealed)

Comment. Former Section 1302 is restated in Estate and Trust Code Section 451 (compelling appearance) without substantive change.

Probate Code § 1303 (repealed)

Comment. Former Section 1303 is restated in Estate and Trust Code Section 452 (examination, testimony, and production of documents), with the addition of the reference to production of documents.

Probate Code § 1304 (repealed)

Comment. Former Section 1304 is superseded by Estate and Trust Code Section 453 (protective orders and enforcement).

Probate Code § 1305 (repealed)

Comment. The first sentence of the first paragraph of former Section 1305 is restated in Estate and Trust Code Section 400(a) (appointment by Controller) and the first sentence of Estate and Trust Code Section 401(a) (qualifications for appointment) without substantive change. The second sentence is restated in Estate and Trust Code Section 401(b) (qualifications for appointment) without change. The third sentence is restated in Estate and Trust Code Section 400(b) (appointment by Controller) without substantive change.

The first sentence of the second paragraph is omitted; it is a transitional provision that no longer serves a function. The second sentence is restated in the first sentence of Estate and Trust Code Section 403(a) (term of office of probate referee) without substantive change. The third sentence is restated in Estate and Trust Code Section 403(b) (term of office of probate referee) without substantive change. The fourth sentence is omitted; it is a transitional provision that no longer serves a function. The fifth sentence is restated in the second sentence of Estate and Trust Code Section 401(a) (qualifications for appointment) without substantive change. The sixth sentence is restated in the second sentence of Estate and Trust Code Section 403(a) (term of office of probate referee) without substantive change.

Probate Code § 1306 (repealed)

Comment. Former Probate Code Section 1306 is restated in Estate and Trust Code Section 402 (qualification examination) without substantive change.

Probate Code § 1307 (repealed)

Comment. Former Probate Code Section 1307 is restated in Estate and Trust Code Section 404(a) (standards for probate referee) without substantive change.

Probate Code § 1308 (repealed)

Comment. Subdivision (a) of former Probate Code Section 1308 is restated in Estate and Trust Code Section 404(b) (standards for probate referee) without substantive change. Subdivision (b) is omitted; the authority of the Controller to remove 10% of the probate referees in a county has not been used in modern times. Moreover, in a large county the terms of the probate referees are staggered so that the Controller will be able to replace probate referees continuously.

Probate Code § 1309 (repealed)

Comment. Former Probate Code Section 1309 is restated in Estate and Trust Code Section 405 (termination of authority) without substantive change.

Probate Code § 1310 (repealed)

Comment. Former Probate Code Section 1310 is omitted; it relates to illegal activities in connection with the inheritance tax, which has been abolished.

Probate Code § 1311 (repealed)

Comment. Former Probate Code Section 1311 is restated in Estate and Trust Code Section 406(a)-(b) (political activities of probate referee) without substantive change.

Probate Code § 1312 (repealed)

Comment. Former Probate Code Section 1312 (with the exception of the last sentence) is restated in Estate and Trust Code 406(c) (political activities of probate referee). The last sentence is omitted; it is a transitional provision that no longer serves a function.

Probate Code § 1313 (repealed)

Comment. Former Section 1313 is omitted. For the report of the California Law Revision Commission concerning administration of estates of decedents, see Recommendation Proposing the Estate and Trust Code, .. Cal. L. Revision Comm'n Reports ... (198.).