

STATE OF CALIFORNIA
California Law Revision Commission

TENTATIVE RECOMMENDATION
relating to
THE NEW ESTATE AND TRUST CODE

NONRESIDENT DECEDENT

September 1986

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 SENT TO THE COMMISSION NOT LATER THAN NOVEMBER 15, 1986.

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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September 5, 1986

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 Estate and Trust Code to the Legislature. The new code will 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 nonresident decedents, which would supersede Probate Code Sections 360-362 and 1040-1043a.

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Comments showing the disposition of each section of existing law that would be repealed in the proposed legislation can be found at the end of this tentative recommendation.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

NONRESIDENT DECEDENT

Primary administration of a decedent's estate is at the decedent's domicile. If a nonresident decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property.¹ Ancillary administration is time-consuming and expensive.²

Existing Summary Procedures to Avoid Ancillary Administration

California has a number of procedures that may be used as an alternative to ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.³

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.⁴

1. See Kimbrough & Lindgren, Ancillary Administration, in 2 California Decedent Estate Administration § 34.16, at 1354 (Cal. Cont. Ed. Bar 1975); 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

2. Kimbrough & Lindgren, supra note 1, §§ 34.21-34.22, at 1356-57.

3. Prob. Code §§ 13100-13115; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

4. Prob. Code §§ 6600-6614; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁵

(4) The personal representative appointed at the decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative publishes a notice to creditors, waits three months for possible objections and, if there are no objections, collects the property by showing proof of appointment and publication and presenting an affidavit of relevant facts.⁶

Recommendations

The new code supplements existing procedures that enable transfer of property without ancillary administration with the following procedures.

Summary collection of small accounts. The existing summary procedure for collection of accounts in a financial institution by a foreign personal representative requires publication of notice to creditors and beneficiaries and a 30-day wait for objections before the funds may be released.⁷ In the case of a small account (an account of \$1,000 or less) the cost of publication is unduly great in relation to the size of the account. In the case of a large account the 30-day wait is unreasonably short when compared with the normal four month creditor claim period. The new code resolves these problems by enabling summary collection of small accounts without prior publication and by imposing a four month delay after publication in the case of large accounts.⁸

5. Prob. Code §§ 13600-13606.

6. Prob. Code § 1043. If a creditor, heir, or devisee objects, this procedure may not be used.

7. Prob. Code § 1043a.

8. In this connection, the new code replaces the existing three month waiting period of Probate Code Section 1043 with a uniform four month period for summary collection of the decedent's property. This parallels the period under the general creditor claim statute. See Prob. Code § 700.

Summary authorization to bring suit in California. Under existing law, if a foreign personal representative wants to bring suit in California to collect a debt due to the decedent or other property of the decedent, the personal representative must first be appointed as a local personal representative in California ancillary proceedings.⁹ This involves unnecessary duplication of procedural steps already accomplished in the foreign estate proceeding.¹⁰ The new code permits the foreign personal representative to sue in California upon filing proof of appointment in the other jurisdiction, a copy of any bond given in the other jurisdiction, and a copy of the decedent's will, if any.¹¹ This will save time and expense to the estate.

9. Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code. Civ. Proc. § 1913; 7 B. Witkin, Summary of California Law Wills and Probate § 58, at 5581 (8th ed. 1974); 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers the personal representative would have in a California domiciliary proceeding. Kimbrough & Lindgren, supra note 1, § 34.47, at 1372. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, Summary of California Law Wills and Probate § 337, at 5813 (8th ed. 1974); see Prob. Code §§ 573-577.

10. The foreign personal representative must petition for probate of the will or for letters of administration, publish notice, prove the validity of the will (if any), give bond if not waived, and obtain letters before an action may be commenced. Prob. Code §§ 323, 327, 329, 361, 440, 441, 541; see also Prob. Code § 481. Thus the foreign personal representative must do a second time what has already been done in the foreign proceeding.

11. The Uniform Probate Code has similar provisions. Uniform Probate Code §§ 4-204, 4-205; see also Uniform Probate Code § 4-206 (substitution of local personal representative for domiciliary foreign personal representative in actions or proceedings). Under the new code, as under these Uniform Probate Code provisions, the foreign personal representative submits to the jurisdiction of the California courts by filing the papers required before suing in California.

Other technical and substantive revisions. The new code liberalizes the requirements for the validity of a foreign will¹² to conform to the rules for determining the validity of a California will.¹³

The new code deletes the requirement that the State Controller must consent to removal of the property from California in the case of informal collection of the decedent's personal property.¹⁴ The repeal of the inheritance tax¹⁵ in California makes this provision unnecessary. The new code also makes a few other clarifying changes in the summary collection procedure.¹⁶

The new code makes clear that a foreign personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts.¹⁷ This is consistent with general civil practice.¹⁸

12. The will is valid if it would be valid either under the law of the testator's domicile at death or under California law. Prob. Code § 362.

13. The will is valid if it would be valid under the law of the place of execution or the place where at the time of execution or death the testator was domiciled, had an abode, or was a national. Prob. Code § 6113.

14. Prob. Code § 1043.

15. Rev. & Tax. Code § 13301.

16. Under the new code the foreign personal representative must show that no other letters on the decedent's estate are then outstanding "in this state". The new code also makes clear that in summary proceedings the foreign personal representative may collect money or other personal property of the decedent but may not enforce debts owed to the decedent.

17. This provision is drawn from Sections 4-301 and 4-302 of the Uniform Probate Code.

18. Code Civ. Proc. § 410.10.

The new code makes clear that a California personal representative is bound by an adjudication in favor of or against any personal representative in another state.¹⁹ This will avoid multiplicity of actions.

19. This provision is drawn from Section 4-401 of the Uniform Probate Code. The adjudication is not binding if made in ancillary proceedings elsewhere and the California personal representative did not have notice and an opportunity to defend. The matter is less likely to have been vigorously litigated in ancillary proceedings, where the amounts involved may be small.

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CONFORMING REVISION

DISPOSITION OF EXISTING SECTIONS

PART 13. NONRESIDENT DECEDENT

CHAPTER 1. DEFINITIONS

§ 12500. Application of definitions

12500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 12500 is comparable to Section 20.

§ 12501. Ancillary administration

12501. "Ancillary administration" means proceedings in this state for administration of the estate of a nonresident decedent.

Comment. Section 12501 is new. It is intended for drafting convenience.

GROSS-REFERENCES

Definitions

Nonresident decedent § 12506

Note. "Ancillary administration is used in Sections 12510-12, 12520, 12530, 12552, 12570-71, 12590.

§ 12502. Authenticated copy

12502. "Authenticated copy" means a copy of a writing that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

Comment. Section 12502 is drawn from a portion of the first sentence of former Probate Code Section 361. It is intended for drafting convenience.

Note. "Authenticated copy" is used in Sections 12521, 12570.

§ 12503. Foreign jurisdiction

12503. "Foreign jurisdiction" means the jurisdiction of the nonresident decedent's domicile.

Comment. Section 12503 is new. It is intended for drafting convenience.

Note. "Foreign jurisdiction" is used in Sections 12504, 12521-22, 12550, 12552, 12570.

§ 12504. Foreign personal representative

12504. "Foreign personal representative" means a personal representative appointed in a foreign jurisdiction.

Comment. Section 12504 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503

Personal representative § 58

Note. "Foreign personal representative" is used in Sections 12530-31, 12550-53, 12570-71, 12590-91.

§ 12505. Local personal representative

12505. "Local personal representative" means a nonresident decedent's personal representative appointed in this state.

Comment. Section 12505 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506

Personal representative § 58

Note. "Local personal representative" is used in Sections 12510, 12571, 12592.

§ 12506. Nonresident decedent

12506. "Nonresident decedent" means a person who dies domiciled in a jurisdiction other than this state.

Comment. Section 12506 is new. It is intended for drafting convenience. The term "nonresident decedent" is not limited to a decedent who dies domiciled in another state (defined in Section 74), but also includes a decedent who dies domiciled in another country. However, some provisions of this part apply only to nonresident decedents who die domiciled in another state. See Sections 12530-12531 (distribution of property to foreign personal representative) and 12550-12554 (collection of personal property).

Note. "Nonresident decedent" is used in Sections 12501, 12503, 12505, 12510, 12520-12522, 12530, 12550, 12564, 12591-92.

CHAPTER 2. ANCILLARY ADMINISTRATION

Article 1. Opening Ancillary Administration

§ 12510. Commencement of proceedings

12510. Any interested person may commence ancillary administration by a petition to the proper court for either or both of the following:

- (a) Probate of the decedent's will.
- (b) Appointment of a local personal representative.

Comment. Section 12510 supersedes former Probate Code Section 360, and continues a portion of the first sentence of former Probate Code Section 361 without substantive change. As used in Section 12510, "interested person" includes the person named as executor in the decedent's will. See Section 48. For the proper court, see Section 12511.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Interested person § 48
Local personal representative § 12505
Nonresident decedent § 12506
Will § 88

§ 12511. Jurisdiction and venue

12511. Ancillary administration shall be in the superior court in one of the following counties:

(a) If property of the decedent is located in the county in which the decedent died, the county in which the decedent died.

(b) If no property of the decedent is located in the county in which the decedent died or if the decedent did not die in this state, any county in which property of the decedent is located, regardless where the decedent died. If property of the decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the superior court in that county has exclusive jurisdiction of the administration of the estate.

Comment. Section 12511 restates former Probate Code Section 301(2)-(3) without substantive change.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Property § 62

§ 12512. Procedure

12512. Notice of ancillary administration shall be given and, except as provided in Article 2 (commencing with Section 12520), the same proceedings had as in the case of a petition for probate of a will or appointment of a personal representative of a person who dies domiciled in this state.

Comment. Section 12512 restates the last sentence of former Probate Code Section 361 without substantive change.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Personal representative § 58
Will § 88

Article 2. Probate of Will of Nonresident Decedent

§ 12520. Procedure not exclusive

12520. A petition for probate of the will of a nonresident decedent in ancillary administration may be made either pursuant to Part 2 (commencing with Section 8000) or pursuant to this article.

Comment. Section 12520 is new. It codifies case law. See Estate of Glassford, 114 Cal. App. 2d 181, 188-92, 249 P. 2d 908 (1952).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Nonresident decedent § 12506
Will § 88

§ 12521. Petition for probate of will

12521. A petition for probate of a nonresident decedent's will pursuant to this article shall include both of the following:

(a) The will or an authenticated copy of the will.

(b) An authenticated copy of the order admitting the will to probate in the foreign jurisdiction or other evidence of the establishment or proof of the will in accordance with the law of the foreign jurisdiction.

Comment. Section 12521 supersedes a portion of the first sentence of former Probate Code Section 361. For the persons who may petition under Section 12521, see Section 12510.

CROSS-REFERENCES

Definitions

Authenticated copy § 12502
Foreign jurisdiction § 12503
Nonresident decedent § 12506
Will § 88

§ 12522. Admission of will to probate

12522. (a) The nonresident decedent's will shall be admitted to probate in this state and no contest or revocation of probate shall be permitted if it appears from the order admitting the will to probate in the foreign jurisdiction or otherwise that all of the following conditions are satisfied:

(1) The will was admitted to probate or established or proved in accordance with the laws of the foreign jurisdiction.

(2) All interested persons were given notice and an opportunity for contest in the foreign jurisdiction.

(3) The determination in the foreign jurisdiction is final, is not subject to revocation, and is based on a finding that the decedent was domiciled at death in the foreign jurisdiction.

(4) The will was valid at the time of execution under the law of any of the following jurisdictions:

(A) This state.

(B) The place where the will was executed.

(C) The place where at the time of execution or at the time of death the decedent was domiciled, had a place of abode, or was a national.

(b) If a nonresident decedent's will is admitted to probate pursuant to this section, the will shall have the same force and effect as the will of a person who dies domiciled in this state that is admitted to probate in this state, and a personal representative shall be appointed to execute the will.

Comment. Section 12522 restates former Probate Code Section 362 and a portion of the first sentence of former Probate Code Section 361. The requirement of former Probate Code Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is broadened to require that the will be valid under the law at the time of execution of the place where the will was executed, under the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national, or under the law of this state. This change makes Section 12522 consistent with the rule for determining the validity of a will first offered for probate in California. See Section 6113.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Interested person § 48
Nonresident decedent § 12506
Personal representative § 58
Will § 88

Article 3. Distribution of Property to Foreign Personal Representative

§ 12530. Conditions for distribution

12530. (a) In the case of a nonresident decedent who dies domiciled in another state, the court in ancillary administration may make an order for preliminary or final distribution of all or a portion of the personal property of the decedent in this state to the foreign personal representative if distribution is for the best interest of the estate or interested persons.

(b) The court order shall be made in the manner and pursuant to the procedure provided in, and is subject to the provisions of, Chapter 1 (commencing with Section 11600) of Part 10.

Comment. Section 12530 supersedes portions of former Probate Code Section 1000, a portion of the first sentence of former Probate Code Section 1040, the last sentence of former Probate Code Section 1041, and former Probate Code Section 1042.

Under Section 12530 a petition may be made by the local personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). Notice of the hearing on the petition is given in the manner provided in Section [1200.5]. Any interested person may oppose the petition. Section 11602 (opposition to petition). Preliminary distribution may not be ordered unless two months have elapsed and distribution may be made without loss to creditors or injury to the estate or any interested person. Sections 11620 (time for petition) and 11621 (order for distribution). Final distribution may not be ordered unless the estate is in a condition to be closed. Section 11640 (petition and order). Distribution may not be made to a personal representative in another country under this article. See Section 74 ("state" defined). Distribution in compliance with the court order entitles the local personal representative to a full discharge, and when the order becomes final it is conclusive against all interested persons. Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

It should be noted that distribution may be made to the foreign personal representative in ancillary administration only upon a court determination that the distribution is for the best interest of the estate or interested persons. In other cases, distribution is made directly to the beneficiaries. See In re Estate of Hudson, 63 Cal. 454 (1883); 2 California Decedent Estate Administration § 34.56, at 1376 (Cal. Cont. Ed. Bar 1975).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Foreign personal representative § 12504
Interested person § 48
Nonresident decedent § 12506
State § 74

§ 12531. Sale of real property and delivery of proceeds

12531. If necessary to make distribution pursuant to this article, the court may direct that real property in the estate be sold and the proceeds distributed to the foreign personal representative. Such a sale shall be made in the same manner as other sales of real property of a decedent.

Comment. Section 12531 restates the last portion of the first sentence and all of the second sentence of former Probate Code Section 1040, and broadens those provisions so that the court may order a sale of real property of the estate by way of either preliminary or final distribution.

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504
Real property § 68
Sales of real property of decedents generally §§ 10050-10142

CHAPTER 3. PROCEEDINGS WITHOUT ANCILLARY ADMINISTRATION

Article 1. Collection of Personal Property

§ 12550. Informal collection authorized

12550. In the case of a nonresident decedent who dies domiciled in another state, the foreign personal representative may, pursuant to the procedure prescribed in this article, collect or receive any money or other personal property of the decedent in this state and remove the property to the foreign jurisdiction.

Comment. Section 12550 restates the first portion of former Probate Code Section 1043. This section does not apply to foreign personal representatives of other countries. See Section 74 ("state" defined).

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Foreign personal representative § 12504
Nonresident decedent § 12506
State § 74

§ 12551. Notice of intent to collect

12551. (a) Except as provided in Section 12553, the foreign personal representative shall publish a notice that includes all of the following information:

- (1) The name and address of the decedent.
- (2) The name and address of the person in this state holding money or other personal property of the decedent.
- (3) A statement that the foreign personal representative intends to collect or receive the money or other personal property and remove the property from this state.
- (4) A statement that any creditor or beneficiary may object to removal of the property by making written objection to the person holding the property of the decedent within four months after first publication of the notice. If the property consists of funds in an account in a financial institution, the written objection may be made to the financial institution at the office or branch where the account is located.

(b) Publication shall be in a newspaper of general circulation published in the county where the debtor resides or where the property is located, or if there is no such newspaper, in a newspaper of general circulation in the county. For this purpose, funds in an account in an office or branch of a financial institution are deemed to be located in the county in which the office or branch is located. Publication shall be pursuant to Section 6063 of the Government Code.

Comment. Section 12551 restates the first, second, third, and sixth sentences of former Probate Code Section 1043 and all of former Probate Code Section 1043a with the following changes:

(1) Publication of all notices under Section 12531 is pursuant to Section 6063 of the Government Code. Under prior law, publication under former Probate Code Section 1043a was made pursuant to Section 6063 of the Government Code, but publication under former Probate Code Section 1043 was made pursuant to Section 6064 of the Government Code.

(2) The references to consent of creditors are omitted.

(3) Objection must be made within four months in all cases, rather than one month in the case of a financial institution and three months in the case of other persons.

(4) An exception to publication is made in the case of an account in a financial institution of less than \$1,000. See Section 12553 (delivery of funds in accounts under \$1,000).

CROSS-REFERENCES

Definitions

Account § 21

Beneficiary § 24

Financial institution § 40

Foreign personal representative § 12504

Person § 56

§ 12552. Payment or delivery to foreign personal representative

12552. Except as provided in Section 12553, the person holding money or other personal property of the decedent shall deliver the property to the foreign personal representative if all of the following conditions are satisfied:

(a) The time prescribed in Section 12551 has expired and the person has not received written objection from any person claiming as a creditor or beneficiary.

(b) The foreign personal representative has presented to the person all of the following documents:

(1) An affidavit of publication of notice.

(2) An authenticated copy of the letters of the foreign personal representative and an affidavit that the foreign personal representative is still serving in that capacity.

(3) An affidavit that in this state, to the best of the affiant's knowledge, there is no other personal representative of the decedent, there is no pending petition for appointment of a personal representative, and there will be no ancillary administration commenced.

Comment. Section 12552 restates the fourth sentence of former Probate Code Section 1043 with the following changes:

(1) The State Controller's consent to transfer required under former Probate Code Section 1043 is not continued, since the California inheritance tax has been repealed. See Rev. & Tax. Code § 13301. However, the State of California may be a creditor of the estate.

(2) In paragraph (3) of subdivision (b), it is made clear that the affidavit must relate to other activities "in this state." This is the same in substance as Section 4-201 of the Uniform Probate Code.

(3) The former provision concerning discharge from liability is continued in Section 12554.

(4) The references to consent of creditors are omitted.

(5) Payment or delivery is mandatory rather than permissive.

(6) An exception is made in the case of an account in a financial institution of less than \$1,000. See Section 12553 (delivery of funds in accounts under \$1,000).

A declaration under penalty of perjury may be used in lieu of the affidavit required by this section. See Code Civ. Proc. § 2015.5.

This section provides for delivery of money or other personal property where no objection is received by the person holding the property. In cases where an objection is received, the person holding the property should not deliver the property to the foreign personal representative but should continue holding the property until collected by a local personal representative in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign jurisdiction § 12503
Beneficiary § 24
Foreign personal representative § 12504
Letters § 52
Person § 56
Personal representative § 58

§ 12553. Delivery of funds in accounts under \$1,000

12553. Notwithstanding any other provision of this article, if the property to be delivered to the foreign personal representative consists of funds in an account in a financial institution under \$1,000:

(a) The foreign personal representative need not publish a notice pursuant to Section 12551 or present an affidavit of publication of notice pursuant to Section 12552.

(b) The financial institution shall deliver the funds to the foreign personal representative if the financial institution has not received written objection from any person claiming as a creditor or beneficiary within 30 days after the foreign personal representative has presented to the financial institution the documents required by Section 12552.

Comment. Section 12553 is new. It excuses publication and provides for expedited delivery in a case of funds in an account under \$1,000.

CROSS-REFERENCES

Definitions

Account § 21
Beneficiary § 24
Financial institution § 40
Foreign personal representative § 12504
Person § 56

§ 12554. Discharge from liability

12554. A person who makes delivery pursuant to this article is discharged from further liability and responsibility for the money or other property without the necessity of inquiring into the truth of any of the facts stated in the documents presented to the person.

Comment. Section 12554 continues a portion of paragraph (4) of former Probate Code Section 1043.

CROSS-REFERENCES

Definitions

Person § 56
Property § 62

Article 2. Miscellaneous Powers of Foreign Personal Representative

§ 12570. Filing proof of authority

12570. If ancillary administration has not been commenced, a foreign personal representative may exercise the powers provided in this article upon filing in the superior court in any county in this state in which property of the decedent is located an authenticated copy of each of the following documents from the foreign jurisdiction:

- (a) The order for appointment of the foreign personal representative.
- (b) The bond given by the foreign personal representative, if any.
- (c) The decedent's will, if any.

Comment. Section 12570 is new. It is drawn from Section 4-204 of the Uniform Probate Code and from Sections 2129.02 and 2129.25 of the Ohio Revised Code. A filing under Section 12570 permits the foreign personal representative to maintain actions and proceedings in this state (Section 12571) and to be sued here in any proceeding relating to the estate (Section 12590).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign jurisdiction § 12503
Foreign personal representative § 12504
Property § 62
Will § 88

§ 12571. Maintaining actions and proceedings

12571. (a) A foreign personal representative who has made the filing authorized by Section 12570 may maintain actions and proceedings in this state, subject to any conditions imposed on nonresident parties generally. The foreign personal representative may collect or receive money or other property awarded in the action or proceeding pursuant to the procedure prescribed in Article 1 (commencing with Section 12550).

(b) A local personal representative may be substituted for the foreign personal representative in any action or proceeding in this state.

Comment. Section 12571 is new. It is drawn from portions of Sections 4-205 and 4-206 of the Uniform Probate Code. Section 12571 supersedes the former rule under Section 1913 of the Code of Civil Procedure, pursuant to which a foreign personal representative ordinarily could not sue in California. See 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985).

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504
Local personal representative § 12505

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

§ 12590. Jurisdiction by act of foreign personal representative

12590. A foreign personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by doing any of the following:

(a) Filing a petition for ancillary administration under Chapter 2 (commencing with Section 12510).

(b) Receiving money or other personal property pursuant to Article 1 (commencing with Section 12550) of Chapter 3. Jurisdiction under this subdivision is limited to the amount of money and value of personal property received.

(c) Filing an authenticated copy of the order for appointment of the foreign personal representative pursuant to Section 12570.

(d) Doing any act in this state as a personal representative that would have given the state jurisdiction over the foreign personal representative as an individual.

Comment. Section 12590 is new and is drawn from Section 4-301 of the Uniform Probate Code.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign personal representative § 12504
Personal representative § 58

§ 12591. Jurisdiction by act of decedent

12591. A foreign personal representative is subject to the jurisdiction of the courts of this state in a representative capacity to the same extent that the nonresident decedent was subject to jurisdiction at the time of death.

Comment. Section 12591 is new. It is drawn from Section 4-302 of the Uniform Probate Code and is consistent with Section 410.10 of the Code of Civil Procedure and with case law. See Mitsui Manufacturers Bank v. Tucker, 152 Cal. App.3d 428, 199 Cal. Rptr. 517 (1984). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504

Nonresident decedent § 12506

§ 12592. Effect of adjudication for or against personal representative

12592. (a) Except as provided in subdivision (b), an adjudication in any jurisdiction in favor of or against any personal representative of a nonresident decedent appointed in that jurisdiction is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

(b) If the adjudication was made in ancillary proceedings in the other jurisdiction against the local personal representative, the adjudication is binding on the local personal representative only if the local personal representative had reasonable notice of the proceedings in the other jurisdiction and an opportunity to defend.

Comment. Subdivision (a) of Section 12592 is drawn from Section 4-401 of the Uniform Probate Code. Subdivision (b) is new.

Section 12592 is based in part on the well-accepted principle that a probate decree in another jurisdiction binds all persons. See 7 B. Witkin, California Procedure Judgment § 231, at 668-69 (3d ed. 1985). Under the full faith and credit clause of the United States Constitution, a judgment rendered by a court of another state is entitled to the same res judicata effect in California as it would have in the forum state. Id. § 203, at 640. See also Code Civ. Proc. § 1908 (judgment binding on successors in interest); Walker v. Hansen, 218 Cal. 619, 24 P.2d 764 (1933) (judgment against administrator binding on trustee of same estate). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Local personal representative § 12505

Nonresident decedent § 12506

Personal representative § 58

CONFORMING REVISIONS

Code Civ. Proc. § 1913 (amended). Sister state judicial records

SEC. . Section 1913 of the Code of Civil Procedure is amended to read:

1913. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except also that the authority of a guardian, conservator, or committee, ~~or of an executor or administrator,~~ does not extend beyond the jurisdiction of the government under which such person was invested with authority.

Comment. Section 1913 is amended to delete the former reference to an executor or administrator. The authority in California of a foreign personal representative is governed by Sections 12500-12592 of the Estate and Trust Code.

DISPOSITION OF EXISTING SECTIONS

CHAPTER 1. PROBATE OF WILLS AND APPLICATION FOR LETTERS

Article 1. Jurisdiction

§ 301 (repealed). Jurisdiction and venue

Comment. . . . Paragraphs (2) and (3) of former Probate Code Section 301 are restated in Estate and Trust Code Section 12511 without substantive change.

Article 4. Foreign Wills

§ 360 (repealed). Authority to probate foreign will

Comment. Former Probate Code Section 360 is superseded by Estate and Trust Code Section 12510.

§ 361 (repealed). Procedure; notice

Comment. The first sentence of former Probate Code Section 361 is superseded by Estate and Trust Code Sections 12510, 12520, 12521, and 12522.

§ 362 (repealed). Effect of probate of foreign will

Comment. Former Probate Code Section 362 is restated in Estate and Trust Code Section 12522 with the following change: The former rule that the will must be valid under the law of the testator's domicile at death or under the law of this state is broadened in Section 12522 to require that the will be valid under the law at the time of execution of the place where the will was executed, under the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national, or under the law of this state. This change makes Section 12522 consistent with the rule for determining the validity of a will first offered for probate in California. See Section 6113.

CHAPTER 16. DISTRIBUTION AND DISCHARGE

Article 1. Preliminary Distribution

§ 1000 (repealed). Petition for preliminary distribution

Comment. . . . The portion of the first sentence of former Probate Code Section 1000 applicable to estates of nonresident decedents is superseded by Estate and Trust Code Section 12530.

Article 4. Estates of Nonresidents

§ 1040 (repealed). Court order for delivery of property to foreign personal representative

Comment. The first sentence of former Probate Code Section 1040 is superseded by Estate and Trust Code Sections 12530 and 12531. The second sentence of former Probate Code Section 1040 is restated in the second sentence of Estate and Trust Code Section 12531 without substantive change.

§ 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Probate Code Section 1041 is superseded by Estate and Trust Code Section 12530. The portion of the second sentence of former Probate Code Section 1041 that required the

clerk to set the petition for hearing is continued in Estate and Trust Code Section 7202. The portion of the second sentence of former Probate Code Section 1041 concerning notice, and all of the third sentence, is superseded by Estate and Trust Code Section 12530.

§ 1042 (repealed). Discharge of local personal representative; effect of order

Comment. Former Probate Code Section 1042 is superseded by Estate and Trust Code Section 12530. The former provision is broadened to apply to preliminary distributions as well as final distributions.

§ 1043 (repealed). Informal collection of personal property

Comment. The first, second, and third sentences of former Probate Code Section 1043 are continued in Estate and Trust Code Sections 12550 and 12551 without substantive change, except as follows:

(1) Publication of notice under Section 12551 is pursuant to Section 6063 of the Government Code instead of Section 6064.

(2) The required waiting period (formerly three months) is increased to four months, consistent with the general creditors' claims period. See Section 9100.

The fourth sentence of former Probate Code Section 1043 is restated in Estate and Trust Code Section 12552 with the following changes:

(1) The State Controller's consent to transfer required under former Probate Code Section 1043 is not continued, since the California inheritance tax has been repealed. See Rev. & Tax. Code § 13301.

(2) In paragraph (3) of subdivision (b) of Section 12552, it is made clear that the affidavit must allege that "in this state" there is no other personal representative of the decedent. This is the same in substance as Section 4-201 of the Uniform Probate Code.

The provision in the fourth sentence of former Probate Code Section 1043 concerning discharge from liability is continued in Estate and Trust Code Section 12554 without substantive change.

The fifth sentence of former Probate Code Section 1043 ("person" defined) is continued in Estate and Trust Code Section 56 without substantive change. The sixth sentence of former Probate Code Section 1043 is restated in Estate and Trust Code Section 12551 without substantive change, except that the references to consent are omitted.

§ 1043a (repealed). Informal collection of accounts

Comment. Former Probate Code Section 1043a is restated in Estate and Trust Code Section 12551 without substantive change.