

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report for 1992

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

# CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

ARTHUR K. MARSHALL

*Chairperson*

SANFORD M. SKAGGS

*Vice Chairperson*

CHRISTINE W.S. BYRD

*Member*

TERRY FRIEDMAN

*Member of Assembly*

BION M. GREGORY

*Member*

DANIEL M. KOLKEY

*Member*

BILL LOCKYER

*Member of Senate*

EDWIN K. MARZEC

*Member*

FORREST A. PLANT

*Member*

COLIN WIED

*Member*

## COMMISSION STAFF

### Legal

NATHANIEL STERLING

*Executive Secretary*

STAN ULRICH

*Assistant Executive Secretary*

ROBERT J. MURPHY III

*Staff Counsel*

PAMELA K. MISHEY

*Staff Counsel*

### Administrative-Secretarial

STEPHEN F. ZIMMERMAN

*Administrative Assistant*

VICTORIA MATIAS

*Composing Technician*

## NOTE

The Commission's reports, recommendations, and studies are published in separate pamphlets that are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound, which permits citation to Commission publications before they are bound. This pamphlet will appear in Volume 22 of the Commission's *Reports, Recommendations, and Studies*.

Cite this pamphlet as *Annual Report for 1992*, 22 Cal. L. Revision Comm'n Reports 833 (1992).

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# **CALIFORNIA LAW REVISION COMMISSION**

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## SUMMARY OF WORK OF COMMISSION

### **Recommendations to the 1993 Legislative Session**

In 1993, the Commission plans to submit to the Legislature a number of recommendations concerning the new Family Code:

- Reorganization of Domestic Violence Provisions
- Implementation of 1992 Family Law Legislation in Family Code
- Miscellaneous Family Code Technical Revisions

The Commission also plans to submit a number of recommendations concerning probate and property law:

- Parent and Child Relationship for Intestate Succession
- Deposit of Estate Planning Documents with Attorney
- Quieting Title to Personal Property

### **Recommendations Enacted in the 1992 Legislative Session**

In 1992, all eight bills introduced to effectuate the Commission's recommendations were enacted. These bills amended 197 sections, added 1230 sections, and repealed 742 sections of California statutes. Commission-recommended legislation enacted in 1992 concerned the following subjects:

- Family Code
- Litigation Involving Decedents
- Standing To Sue for Wrongful Death
- Recognition of Agent's Authority Under Statutory Form Power of Attorney
- Recognition of Trustees' Powers
- Relocation of Powers of Appointment Statute
- Notice of Trustees' Fees
- Nonprobate Transfers of Community Property
- Special Needs Trusts
- Preliminary Distribution of Estate Without Court Supervision
- Transfer of Conservatorship Property to Trust
- Nonprobate Transfer to Trustee Named in Will

- Compensation in Guardianship and Conservatorship Proceedings
- Interest and Income on Trust Distributions
- Form of Acknowledgment of Power of Attorney

**Commission Plans for 1993**

During 1993, the Commission will work primarily on two major projects — administrative law and the Family Code. The Commission will also work on a comprehensive power of attorney statute and consider some probate and property matters. The Commission may also consider other subjects as time permits.

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STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

4000 MIDDLEFIELD ROAD, SUITE D-2  
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BION M. GREGORY  
DANIEL M. KOLKEY  
SENATOR BILL LOCKYER  
EDWIN K. MARZEC  
FORREST A. PLANT  
COLIN W. WIED

October 30, 1992

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1992.

All eight bills introduced in 1992 to effectuate the Commission's recommendations were enacted. A concurrent resolution recommended by the Commission was adopted.

The Commission is grateful to the members of the Legislature who carried Commission-recommended bills:

- Senator Deddeh (miscellaneous creditors' remedies bill)
- Senator Lockyer and the Senate Committee on Judiciary (general probate bill and concurrent resolution continuing the Commission's authority to study previously authorized topics)
- Senator Mello (guardianship and conservatorship matters)
- Assembly Member Horcher (nonprobate transfers of community property bill, powers of appointment bill, and special-needs trusts bill)
- Assembly Member Speier (Family Code and conforming revisions bills)

The Commission held seven two-day meetings during 1992. Meetings were held in Oakland, Sacramento, and San Diego.

Respectfully submitted,

Arthur K. Marshall  
*Chairperson*

## ANNUAL REPORT FOR 1992

### Introduction

The California Law Revision Commission<sup>1</sup> was created in 1953 as the permanent successor to the Code Commission and given responsibility for the continuing substantive review of California statutory and decisional law.<sup>2</sup> The Commission studies California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- Intensively studying complex and sometimes controversial subjects
- Identifying major policy questions for legislative attention
- Gathering the views of interested persons and organizations
- Drafting recommended legislation for legislative consideration

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting implementing legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Committee on Rules
- A Member of the Assembly appointed by the Speaker
- Seven members appointed by the Governor with the advice and consent of the Senate
- The Legislative Counsel, who is an ex officio member

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1. See Gov't Code §§ 8280-8298 (statute establishing Law Revision Commission) (Appendix 1 *infra*).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 26 topics.<sup>3</sup>

Commission recommendations have resulted in the enactment of legislation affecting 17,457 sections of the California statutes: 8,258 sections have been added, 2,768 sections amended, and 6,431 sections repealed. The Commission has submitted more than 275 recommendations to the Legislature. Approximately 96% of these recommendations have been enacted in whole or in substantial part.<sup>4</sup>

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Report.

### **1993 Legislative Program**

In 1993, the Commission plans to submit recommendations to the Legislature concerning the following subjects:

#### **Family Code**

The Commission plans to submit the following recommendations concerning the Family Code:

- Reorganization of Domestic Violence Provisions
- Implementation of 1992 Family Law Legislation in Family Code

The Commission also plans to recommend additional technical and minor substantive revisions in the new Family Code that come to the Commission's attention in time to be included in 1993 legislation.

#### **Probate Law**

The Commission plans to submit the following recommendations concerning probate law and procedure:

- Parent and Child Relationship for Intestate Succession
- Deposit of Estate Planning Documents with Attorney

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3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 2 *infra*.

4. See list of recommendations and legislative action in Appendix 3 *infra*.

The Commission also plans to recommend additional technical and minor substantive revisions in the Probate Code that come to the Commission's attention in time to be included in 1993 legislation.

### **Property Law**

The Commission plans to submit the following recommendation concerning property law:

- Quieting Title to Personal Property

### **Major Studies in Progress**

During 1993, the Commission plans to work on three major topics: administrative law, the Family Code, and a comprehensive power of attorney statute. The Commission will also consider various property and probate matters and other subjects to the extent time permits.

#### **Administrative Law**

The Commission is giving priority to the study of administrative law. The Commission has divided the study into four phases: (1) administrative adjudication, (2) judicial review, (3) administrative rulemaking, and (4) nonjudicial oversight.

The Commission has made substantial progress on the administrative adjudication phase of the study. The Commission's objective is to prepare a new administrative adjudication statute to govern constitutionally and statutorily required administrative hearings of all state agencies, with the exception of the Legislature, the courts and judicial branch, the Governor and Governor's office, and the University of California. The Commission has considered background studies on the matter prepared by its consultant, Professor Michael Asimow of UCLA Law School. The first three studies have been published under the title "Toward a New California Administrative Procedure Act: Adjudication Fundamentals."<sup>5</sup> The fourth study on "The Adjudication Process" is not yet published. The Commission has completed a working draft of a comprehensive administrative adjudication statute, and plans to issue a tentative recommendation

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5. 39 UCLA L. Rev. 1067 (1992).

on the matter for review and comment by interested persons, organizations, and agencies during 1993.

The Commission has also retained Professor Asimow to prepare a background study on judicial review of administrative decisions. The Commission plans to commence work on this phase of the administrative law study during 1992 with the intent to complete it during 1993.

The Commission hopes to submit a combined recommendation on administrative adjudication and judicial review for legislative action in the 1994 legislative session.

### **Family Code**

In 1992, the new Family Code was enacted on Commission recommendation, with a January 1, 1994, operative date.<sup>6</sup> The new code reorganizes and collects into one code most of the scattered provisions of existing family law. Lengthy sections found in existing law have been divided into shorter, more manageable sections. In some cases, provisions duplicated in several existing statutes have been consolidated into one general statute. Statutory language has been improved and simplified.

Now that the new code has been enacted, 1992 family law legislation must be incorporated into it.<sup>7</sup> As with the original Family Code

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6. In 1989, the Legislature directed the Commission to review the statutes relating to the adjudication of child and family civil proceedings and to make recommendations to the Legislature regarding the establishment of a Family Relations Code. 1989 Cal. Stat. res. ch. 70. The Legislature directed that this topic be given equal priority with the administrative law study.

The Commission distributed a questionnaire to approximately 4,000 individuals in 1990. The questionnaire was designed to obtain the views of interested persons as to whether there should be a new Family Code or a separate act in which the family law statutory provisions would be compiled and, if so, what should be contained in the new code or act. The great majority of those who responded to the questionnaire favored a new code or act. See *Annual Report for 1990*, 20 Cal. L. Revision Comm'n Reports 2201, 2212 (1990).

In the early part of 1992, the Commission conducted six workshops in Los Angeles, Sacramento, and San Francisco for the purpose of giving interested persons the opportunity to review the draft statute in detail with the Commission's staff, including the Commission's Family Code consultant, John H. DeMouilly.

7. The Family Code bill (AB 2650) and the conforming revision bill (AB 2641) were both made subordinate to all 1992 family law legislation. See 1992 Cal. Stat. ch. 162, § 14, 1992 Cal. Stat. ch. 163, § 160. Thus, any provisions added to or

study, the Commission will not be attempting to make substantive changes in the process of incorporating 1992 legislation into the new code. Several additional areas of the law are being considered for inclusion in the Family Code, such as the provisions relating to the enforcement of support by district attorneys and the provisions relating to juvenile dependency.

Other technical changes will be proposed to deal with any problems in the new code that are brought to the Commission's attention or that are discovered in the course of the Commission's continuing review. Interested persons should draw the Commission's attention to any defect believed to exist in the new code so that the Commission can study the matter and present any necessary corrections for legislative consideration.

### **Comprehensive Power of Attorney Statute**

The Commission plans to continue working on development of a comprehensive power of attorney statute for introduction in the 1994 legislative session. The comprehensive statute would replace the handful of separate power of attorney statutes that have been enacted during the last 12 years.

### **Probate Law**

A new Probate Code was enacted in 1990 on recommendation of the Commission<sup>8</sup> and became operative on July 1, 1991. The Commission will continue to monitor the experience under the new code and make recommendations needed to correct any technical or substantive defects that come to its attention.

### **Effect of Joint Tenancy Title on Community Property**

There have been continuing problems in California law concerning the treatment of property held between married persons in joint tenancy title where the source is community property. The Commission

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amended in statutes such as the Family Law Act in the Civil Code must be repealed and incorporated into the new Family Code structure.

8. 1990 Cal. Stat. ch. 79. See also 1990 Cal. Stat. ch. 710, § 46 (amending 1990 Cal. Stat. ch. 79, § 37); see also *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1990); *Revised and Supplemental Comments to the New Probate Code*, 20 Cal. L. Revision Comm'n Reports 2001 (1990).

has studied the problem during 1992 and plans to complete its study and make recommendations concerning it in 1993.

### **Calendar of Topics for Study**

The Commission's calendar of topics is set out in Appendix 2 in this Annual Report. Each of these topics has been authorized for Commission study by the Legislature.<sup>9</sup>

### **New Topics for Future Consideration**

The Commission recommends that it be authorized to study three new topics:

#### **Shareholder Rights and Corporate Director Responsibilities**

The California law governing shareholder derivative actions requires the shareholder to allege with particularity the efforts made to secure the board action the shareholder desires or the reasons for not making the effort before proceeding with an action in the corporation's name.<sup>10</sup> Notwithstanding the statute, the demand requirement is excused routinely.<sup>11</sup> The law should be reviewed with a view toward clarification and codification of standards for excuse under the statute.

A principal defense of a director in a shareholder derivative action and in other litigation is the business judgment rule, a common law

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9. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study. For the current authorization, see 1992 Cal. Stat. res. ch. 72. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions. See also 1990 Cal. Stat. ch. 943, § 3 ("The California Law Revision Commission shall study the impacts of the changes in Sections 483.010 and 483.015 of the Code of Civil Procedure made by Sections 1 and 2 of this act during the period from January 1, 1991, to and including December 31, 1993, and shall report the results of its study, together with recommendations concerning continuance or modification of these changes, to the Legislature on or before December 31, 1994.")

10. Corp. Code § 800(b)(2).

11. See, e.g., 2 Marsh's California Corporation Law § 15.29 (3d ed., Supp. 1992).

principle now codified in Corporations Code Section 309. The codification delineates the protection given for a good faith business decision. The importation of ordinary negligence principles into the business judgment rule has confused the law in this area<sup>12</sup> and been a factor in the decision of a number of California corporations to reincorporate in Delaware. Delaware has a clear and well-defined body of law governing the business judgment rule, including a gross negligence limitation with respect to inquiry.<sup>13</sup> The business judgment rule of Delaware and other jurisdictions should be examined to determine whether they may offer useful guidance for codification and clarification of the law in California.

### **Unfair Business Practices**

Business and Professions Code Sections 17200-17208 provide injunctive relief and civil penalties for a broad spectrum of unfair business practices, enforceable by both public and private plaintiffs. These remedies have been used widely in the past two decades, generating extensive case law and commentary exposing ambiguities and procedural problems in the statutes.<sup>14</sup> Specific unresolved issues and problems include the scope of the statute (definition of “unfair competition”), whether litigation between a private person acting on behalf of the public and a defendant can have res judicata and collateral estoppel effect on the public, and whether litigation between a public prosecutor and a defendant can bind other public prosecutors or a private person. A study should be made to determine whether these issues may be clarified by statute.

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12. Corp. Code § 309(a); *Gaillard v. Natomas Co.*, 208 Cal. App. 3d 1250, 256 Cal. Rptr. 702 (1989).

13. See, e.g., 2 *Marsh's California Corporation Law* § 11.3, at 788-89 (3d ed., Supp. 1992).

14. See, e.g., 11 B. Witkin, *Summary of California Law Equity* §§ 96-99, at 776-81 (9th ed., 1990); *Competitive Business Practices* § 3.6 (2d ed., Cal. Cont. Ed. Bar 1991); Chilton & Stern, *California's Unfair Business Practices Statutes: Settling the "Nonclass Class" Action and Fighting the "Two-Front War,"* 12 CEB Civ. Litigation Rep. 95, 96-99 (1990).

### **Uniform Unincorporated Nonprofit Association Act**

The National Conference of Commissioners on Uniform State Laws has recommended for adoption in all the states a new Uniform Unincorporated Nonprofit Association Act (1992). The uniform act deals with issues such as suits by and against unincorporated associations, appointment of agents for service of process, and liability of members. Some of these issues are governed by statutes in California, many enacted on Commission recommendation.<sup>15</sup> The uniform act builds on the law of California and other jurisdictions, and offers the possibility of uniformity among the states on issues with which it deals. It would be appropriate for the Commission to review the uniform act to determine whether the act, or parts of it, should be adopted in California.

### **Function and Procedure of Commission**

The principal duties of the Commission<sup>16</sup> are to:

- (1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,<sup>17</sup> bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

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15. See, e.g., Corp. Code §§ 24000-24007; see also *Suit by or Against an Unincorporated Association*, 8 Cal. L. Revision Comm'n Reports 901 (1967); *Service of Process on Unincorporated Association*, 8 Cal. L. Revision Comm'n Reports 1403 (1967); *Service of Process on Unincorporated Associations*, 13 Cal. L. Revision Comm'n Reports 1657 (1976).

16. Gov't Code §§ 8280-8298 (statute governing California Law Revision Commission). See Appendix 1, *infra*.

17. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

- (3) Recommend such changes in the law as it deems necessary to bring California law into harmony with modern conditions.<sup>18</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. As a rule, the Commission may study only topics that the Legislature, by concurrent resolution, authorizes it to study.<sup>19</sup> However, the Commission may study and recommend revisions to correct technical or minor substantive defects in state statutes without a prior concurrent resolution.<sup>20</sup>

The Commission's work on a recommendation is commenced after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a consultant. Use of expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as consultants have already acquired the considerable background necessary to understand the specific problems under consideration and receive little more than an honorarium for their services. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar, other bar associations, and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to

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18. See Gov't Code § 8288. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the United States Supreme Court. Gov't Code § 8290.

19. See Gov't Code § 8293.

20. See Gov't Code § 8298.

effectuate its recommendation) is published.<sup>21</sup> The background study is sometimes published with the recommendation published by the Commission or in a law review.<sup>22</sup>

The Commission ordinarily prepares an official Comment explaining each section it recommends. These Comments are included in the Commission's recommendations and are frequently revised by the Commission in later reports to reflect amendments made in the legislative process.<sup>23</sup> The reports provide background with respect to the Commission intent in proposing the enactment, such intent being reflected in the Comments to the various sections of the bill contained in the Commission's recommendation, except to the extent that new or revised Comments are set out in the report on the bill as amended.<sup>24</sup>

Comments indicate the derivation of a section and often explain its purpose, its relation to other sections, and potential problems as to its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provi-

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21. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

22. For recent background studies published in law reviews, see Kasner, *Donative and Interspousal Transfers of Community Property in California: Where We Are (or Should Be) After MacDonald*, 23 Pac. L.J. 361 (1991); Asimow, *Toward a New California Administrative Procedure Act: Adjudication Fundamentals*, 39 UCLA L. Rev. 1067 (1992). For a list of background studies published in law reviews before 1991, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971); 11 Cal. L. Revision Comm'n Reports 1008 n.5, 1108 n.5 (1973); 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976); 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982); 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984); 18 Cal. L. Revision Comm'n Reports 212 n.17, 1713 n.20 (1986); 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988); 20 Cal. L. Revision Comm'n Reports 198 n.16 (1990).

23. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after publication of its recommendation. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

24. For examples of such reports, see Appendices 7-10 in this Annual Report. Reports containing new or revised comments are printed in the Commission's Annual Report for the year in which the recommendation was proposed. For a description of legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

sions.<sup>25</sup> However, while the Commission endeavors in Comments to explain any changes in the law made by a section, the Commission does not claim that every inconsistent case is noted in the Comments, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>26</sup> Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.<sup>27</sup>

Commission publications are distributed to the Governor, legislative leadership, and, on request, to heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>28</sup> Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.<sup>29</sup>

The reports, recommendations, and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable

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25. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968); see also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983). Commission Comments are published by Bancroft-Whitney and West Publishing Company in their editions of the annotated codes.

26. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

27. The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

28. See Gov't Code § 8291. In the past, Commission publications have generally been distributed free of charge. Due to budget constraints, the Commission in 1991 began implementing a charge for Commission publications.

29. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965). See also Quillinan, *The Role and Procedures of the California Law Revision Commission in Probate and Trust Law Changes*, 8 Est. Plan. & Cal. Prob. Rep. 130-31 (Cal. Cont. Ed. Bar 1987).

contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.<sup>30</sup>

### Personnel of Commission

As of November 1, 1992, the following persons were members of the Law Revision Commission:

| <b>Members Appointed by Governor</b> <sup>31</sup>         | <i>Term Expires</i> |
|--|---------------------|
| Arthur K. Marshall, Los Angeles<br><i>Chairperson</i>      | October 1, 1995     |
| Sanford M. Skaggs, Walnut Creek<br><i>Vice Chairperson</i> | October 1, 1993     |
| Christine W.S. Byrd, Los Angeles                           | October 1, 1993     |
| Daniel M. Kolkey, Los Angeles                              | October 1, 1995     |
| Edwin K. Marzec, Santa Monica                              | October 1, 1995     |
| Forrest A. Plant, Sacramento                               | October 1, 1993     |
| Colin W. Wied, San Diego                                   | October 1, 1995     |

### Legislative Members<sup>32</sup>

Assembly Member Terry Friedman, Sherman Oaks  
Senator Bill Lockyer, Hayward

### Legislative Counsel<sup>33</sup>

Bion M. Gregory, Sacramento

30. See "Commission Publications" *infra*.

31. Seven Commission members are appointed by the Governor with the advice and consent of the Senate. Gov't Code § 8281. These Commissioners serve staggered four-year terms. *Id.* The provision in Government Code Section 8281 to the effect that Commission members appointed by the Governor hold office until the appointment and qualification of their successors has been superseded by the rule in Government Code Section 1774 declaring a vacancy if there is no reappointment 90 days following expiration of the term of office. See also Gov't Code § 1774.7 (Section 1774 overrides contrary special rules unless specifically excepted).

32. The Senate and Assembly members of the Commission serve at the pleasure of the appointing power, the Senate Committee on Rules and the Speaker of the Assembly, respectively. Gov't Code § 8281.

33. The Legislative Counsel serves on the Commission by virtue of office. Gov't Code § 8281.

Effective September 1, 1992, the Commission elected Arthur K. Marshall as Chairperson (succeeding Edwin K. Marzec), and Sanford M. Skaggs as Vice Chairperson (succeeding Arthur K. Marshall). The terms of the new officers end August 31, 1993.

As of November 1, 1992, the following persons were on the Commission's staff:

*Legal*

Nathaniel Sterling  
*Executive Secretary*

Robert J. Murphy  
*Staff Counsel*

Stan Ulrich  
*Assistant Executive Secretary*

Pamela K. Mishey  
*Staff Counsel*

*Secretarial*

Victoria V. Matias  
*Composing Technician*

In November 1992, Stephen F. Zimmerman, the Commission's Administrative Assistant since May 1987, left for a position with the Department of Finance, his position having been eliminated as the result of budget reductions.

**Legislative History of Recommendations  
Submitted to 1992 Legislative Session**

The Commission recommended eight bills and one concurrent resolution for enactment at the 1992 legislative session. All eight bills were enacted and the concurrent resolution was adopted.

**Family Code**

Assembly Bills 2650 (Family Code) and Assembly Bill 2641 (conforming revisions) became Chapters 162 and 163, respectively, of the Statutes of 1992, and were introduced by Assembly Member Speier to effectuate the Commission's recommendation proposing enactment of the Family Code. See *Family Code*, 22 Cal. L. Revision Comm'n Reports 1 (1992). The bills were enacted after numerous technical amendments were made.<sup>34</sup>

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34. The report on the Family Code sets out the statute as enacted and includes revised Comments reflecting the changes made during the legislative process.

### **Omnibus Probate Bill**

Senate Bill 1496, which became Chapter 178 of the Statutes of 1992, was introduced by Senator Lockyer, on behalf of the Senate Committee on Judiciary, to effectuate six Commission recommendations relating to probate law and procedure and to make a number of technical and minor substantive revisions. See *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992) (Appendix 4 *infra*); *Standing To Sue for Wrongful Death*, 22 Cal. L. Revision Comm'n Reports 955 (1992) (Appendix 5 *infra*); *Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 22 Cal. L. Revision Comm'n Reports 965 (1992) (Appendix 6 *infra*); *Preliminary Distribution Without Court Supervision*, 21 Cal. L. Revision Comm'n Reports 209 (1991); *Notice of Trustees' Fees*, 21 Cal. L. Revision Comm'n Reports 191 (1991); *Recognition of Trustees' Powers*, 21 Cal. L. Revision Comm'n Reports 2849 (1991); *Nonprobate Transfer to Trustee Named in Will*, 21 Cal. L. Revision Comm'n Reports 201 (1991). Additional technical amendments were made relating to interest and income on trust distributions and the form of acknowledgment of powers of attorney (see Appendix 7 *infra*).

Senate Bill 1496 was enacted after several amendments were made to the bill. For new and revised Comments reflecting amendments made in the legislative process, see *Report of the California Law Revision Commission on Chapter 178 of the Statutes of 1992 (Senate Bill 1496)*, 22 Cal. L. Revision Comm'n Reports 977 (1992) (Appendix 7 *infra*).

### **Nonprobate Transfers of Community Property**

Assembly Bill 1719, which became Chapter 51 of the Statutes of 1992, was introduced by Assembly Member Horcher to effectuate the Commission's recommendation on *Nonprobate Transfers of Community Property*, 21 Cal. L. Revision Comm'n Reports 163 (1991). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapter 51 of the Statutes of 1992 (Assembly Bill 1719)*, 22 Cal. L. Revision Comm'n Reports 985 (1992) (Appendix 9 *infra*).

**Powers of Appointment**

Assembly Bill 1722, which became Chapter 30 of the Statutes of 1992, was introduced by Assembly Member Horcher to effectuate the Commission's recommendation on *Relocation of Powers of Appointment Statute*, 21 Cal. L. Revision Comm'n Reports 91 (1991). The bill was enacted after amendments were made.

**Creditors' Remedies**

Senate Bill 1372, which became Chapter 283 of the Statutes of 1992, was introduced by Senator Deddeh to effectuate the Commission's recommendation on *Miscellaneous Creditors' Remedies Matters*, 21 Cal. L. Revision Comm'n Reports 135 (1992). The bill was enacted after an amendment was made. See *Report of the California Law Revision Commission on Chapter 283 of the Statutes of 1992 (Senate Bill 1372)*, 22 Cal. L. Revision Comm'n Reports 9987 (1992) (Appendix 10 *infra*).

**Guardianship and Conservatorship**

Senate Bill 1455, which became Chapter 572 of the Statutes of 1992, was introduced by Senator Mello to effectuate the Commission's recommendations on *Transfer of Conservatorship Property to Trust*, 21 Cal. L. Revision Comm'n Reports 219 (1992), and *Compensation in Guardianship and Conservatorship Proceedings*, 21 Cal. L. Revision Comm'n Reports 227 (1991). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapters 355 and 572 of the Statutes of 1992 (Assembly Bill 3328 and Senate Bill 1372)*, 22 Cal. L. Revision Comm'n Reports 983 (1992) (Appendix 8 *infra*).

**Special Needs Trusts**

Assembly Bill 3328, which became Chapter 355 of the Statutes of 1992, was introduced by Assembly Member Horcher to effectuate the Commission's recommendation on *Special Needs Trust for Disabled Minor or Incompetent Person* 989 Cal. L. Revision Comm'n Reports 947 (1992) (Appendix 11 *infra*). The bill was enacted after amendments were made. See *Report of the California Law Revision Commission on Chapters 355 and 572 of the Statutes*

of 1992 (*Assembly Bill 3328 and Senate Bill 1372*), 22 Cal. L. Revision Comm'n Reports 983 (1992) (Appendix 8 *infra*).

### **Resolution Authorizing Topics for Study**

Senate Concurrent Resolution 66, introduced by Senator Lockyer on behalf of the Senate Committee on Judiciary, and adopted as Resolution Chapter 72 of the Statutes of 1992, continues the Commission's authority to study 26 topics previously authorized for study.

### **Report on Statutes Repealed by Implication or Held Unconstitutional**

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared<sup>35</sup> and has the following to report:

- (1) No decision of the United States Supreme Court holding a state statute repealed by implication has been found.
- (2) No decision of the United States Supreme Court holding a state statute unconstitutional has been found.
- (3) No decision of the California Supreme Court holding a state statute repealed by implication has been found.<sup>36</sup>

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35. This study has been carried through 3 Cal. 4th 194 (Advance Sheet No. 23, Aug. 27, 1992) and 112 S. Ct. 3061 (Advance Sheet No. 18, July 15, 1992).

36. One decision of the California Supreme Court discussed the rule of repeal by implication, emphasizing the strong presumption against implied repeals. In *Droeger v. Friedman, Sloan & Ross*, 54 Cal. 3d 26, 812 P.2d 931, 283 Cal. Rptr. 584 (1991), the court held that Code of Civil Procedure Section 412.21(a)(2) did not create an implied exception to Civil Code Section 5127. Code of Civil Procedure Section 412.21(a)(2) states that restraints on transfer of community property contained in a summons do not prevent a party from using community property to pay reasonable attorney's fees in a proceeding for dissolution, nullity, or legal separation. Civil Code Section 5127 states that in order to transfer community real property both spouses must join in execution of the transfer. Civil Code Section 5127 has been

- (4) Two decisions of the California Supreme Court held state statutes unconstitutional.<sup>37</sup>

In *Adoption of Kelsey S.*<sup>38</sup> the court held that Civil Code Section 7017(d)(2), allowing termination of an unwed father's parental rights on a showing of the child's best interests, is unconstitutional when applied to an unwed father who shows a full commitment to his parental responsibilities. The guarantees of equal protection and due process of the Fourteenth Amendment of the U.S. Constitution require that an unwed father who shows a full commitment to his parental responsibilities be provided the same protection as a mother, and that his parental rights only be terminated on a showing that his custody would be detrimental to the child.<sup>39</sup>

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amended to allow encumbrance of community real property by either spouse to pay attorney's fees. 1992 Cal. Stat. ch. 536, § 6.

37. Three decisions of the California Supreme court imposed constitutional limitations on the application of a state statute. In *Walnut Creek Manor v. Fair Employment & Housing Commission*, 54 Cal. 3d 245, 814 P.2d 704, 284 Cal. Rptr. 718 (1991), the court held that Government Code Section 12987 violates the judicial power clause of Article VI, Section 1, of the California Constitution when construed to allow the commission to award unlimited general compensatory damages for emotional distress. The statute has been amended to provide for, among other things, specified civil penalties and payment of actual damages to the complainant. 1992 Cal. Stat. ch. 182, § 18.

In *Legislature v. Eu*, 54 Cal. 3d 492, 816 P.2d 1309, 286 Cal. Rptr. 283 (1991), the court held that, when applied to incumbent legislators, the provision of Proposition 140 (approved at Nov. 6, 1990, general election) limiting pension benefits of state legislators violates the contract clause, Article 1, Section 10, of the U.S. Constitution.

In *Moore v. California State Board of Accountancy*, 2 Cal. 4th 999, 831 P.2d 798, 9 Cal. Rptr. 2d 358 (1992), the court held that Business and Profession Code Section 5058 is an unconstitutional infringement on commercial speech under the First Amendment to the U.S. Constitution, if construed as an outright ban on the use, by unlicensed persons, of the terms "accountant" and "accounting." The use of these terms by unlicensed persons is constitutionally protected, so long as express disclaimers are included making clear that the person using the term is not licensed.

38. 1 Cal. 4th 816, 823 P.2d 1216, 4 Cal. Rptr. 615 (1992).

39. In response to the holding of this case, the Legislature created a pilot program allowing an unwed father to voluntarily establish paternity at the time of a child's birth by signing an affidavit at the hospital or other place of birth. The affidavit creates a presumption of paternity, thus requiring that the detriment standard be applied in a proceeding to terminate the presumed father's parental rights. See Evid. Code § 621.1.

In *Del Monte v. Wilson*<sup>40</sup> the court held that Military and Veterans Code Sections 890 and 980, restricting certain benefits to persons who were residents of California at the time they entered the military, violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, since application would result in different treatment of state residents based on length of residency.

### **Recommendations**

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized<sup>41</sup> and to study the new topics recommended for study, *supra*.<sup>42</sup>

Pursuant to the mandate imposed by Government Code Section 8290, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent they have been held unconstitutional and have not been amended or repealed.

[PAGE NUMBERS 857-60 OMITTED]

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40. 1 Cal. 4th 1009, 824 P.2d 632, 4 Cal. Rptr. 826 (1992).

41. See "Calendar of Topics Authorized for Study," Appendix 2 *infra*.

42. See "New Topics for Future Consideration" *supra*.

## APPENDIX 1

### STATUTE GOVERNING THE CALIFORNIA LAW REVISION COMMISSION

#### GOVERNMENT CODE SECTIONS 8280-8297\*

##### **§ 8280. Creation**

8280. There is created in the State Government the California Law Revision Commission.

##### **§ 8281. Membership**

8281. The commission consists of one Member of the Senate appointed by the Committee on Rules, one Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel shall be an ex officio member of the commission.

The Members of the Legislature appointed to the commission shall serve at the pleasure of the appointing power and shall participate in the activities of the commission to the extent that the participation is not incompatible with their respective positions as Members of the Legislature. For the purposes of this article, those Members of the Legislature shall constitute a joint interim investigating committee on the subject of this article and as a joint interim investigating committee shall have the powers and duties imposed upon those committees by the Joint Rules of the Senate and Assembly.

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\* Added by 1984 Cal. Stat. ch. 1335, § 2. Formerly Gov't Code §§ 10300-10340, added by 1953 Cal. Stat. ch. 1445, § 2; amended by 1960 Cal. Stat. ch. 61, § 1 (1st Ex. Sess.); 1965 Cal. Stat. ch. 371, § 110; 1978 Cal. Stat. ch. 228, § 1; 1981 Cal. Stat. ch. 1106, § 2.

The members appointed by the Governor shall be appointed for a term of four years and shall hold office until the appointment and qualification of their successors. The terms of the members first appointed shall not commence earlier than October 1, 1953, and shall expire as follows: four on October 1, 1955, and three on October 1, 1957. When a vacancy occurs in any office filled by appointment by the Governor, he or she shall appoint a person to the office, who shall hold office for the balance of the unexpired term of his or her predecessor.

**§ 8282. Compensation and expenses**

8282. (a) The members of the commission shall serve without compensation, except that each member appointed by the Governor shall receive fifty dollars (\$50) for each day's attendance at a meeting of the commission.

(b) In addition, each member shall be allowed actual expenses incurred in the discharge of his or her duties, including travel expenses.

*Note.* Government Code Section 11564.5 provides a per diem compensation of \$100, notwithstanding any other provision of law.

**§ 8283. Chairperson**

8283. The commission shall select one of its members chairperson.

**§ 8284. Executive secretary**

8284. The commission may appoint an executive secretary and fix his or her compensation, in accordance with law.

**§ 8285. Employees**

8285. The commission may employ and fix the compensation, in accordance with law, of such professional, clerical and other assistants as may be necessary.

**§ 8286. Assistance of state**

8286. The material of the State Library shall be made available to the commission. All state agencies, and other official state organizations, and all persons connected therewith shall give the commission full information, and reasonable assistance in any matters of research requiring recourse to them, or to data within their knowledge or control.

**§ 8287. Assistance of bar**

8287. The Board of Governors of the State Bar shall assist the commission in any manner the commission may request within the scope of its powers or duties.

**§ 8288. Political activities of commissioners and staff**

8288. No employee of the commission and no member appointed by the Governor shall, with respect to any proposed legislation concerning matters assigned to the commission for study pursuant to Section 8293, advocate the passage or defeat of the legislation by the Legislature or the approval or veto of the legislation by the Governor or appear before any committee of the Legislature as to such matters unless requested to do so by the committee or its chairperson. In no event shall an employee or member of the commission appointed by the Governor advocate the passage or defeat of any legislation or the approval or veto of any legislation by the Governor, in his or her official capacity as an employee or member.

**§ 8289. Duties of commission**

8289. The commission shall, within the limitations imposed by Section 8293:

(a) Examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

(b) Receive and consider proposed changes in the law recommended by the American Law Institute, the National Conference of Commissioners on Uniform State Laws, any bar association or other learned bodies.

(c) Receive and consider suggestions from judges, justices, public officials, lawyers, and the public generally as to defects and anachronisms in the law.

(d) Recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state into harmony with modern conditions.

#### **§ 8290. Unconstitutional and impliedly repealed statutes**

8290. The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

#### **§ 8291. Submission and distribution of reports**

8291. The commission shall submit its reports, and its recommendations as to revision of the laws, to the Governor and the Legislature, and shall distribute them to the Governor, the Members of the Legislature, and the heads of all state departments.

*Note.* Section 8291 is limited by the later-enacted rules governing distribution of state reports set out in Government Code Sections 11094-11099.

#### **§ 8292. Contents of reports**

8292. The commission may, within the limitations imposed by Section 8293, include in its report the legislative measures proposed by it to effect the adoption or enactment of the proposed revision. The reports may be accompanied by exhibits of various changes, modifications, improvements,

and suggested enactments prepared or proposed by the commission with a full and accurate index thereto.

**§ 8293. Calendar of topics**

8293. The commission shall file a report at each regular session of the Legislature which shall contain a calendar of topics selected by it for study, including a list of the studies in progress and a list of topics intended for future consideration. After the filing of its first report the commission shall confine its studies to those topics set forth in the calendar contained in its last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The commission shall also study any topic which the Legislature, by concurrent resolution, refers to it for the study.

**§ 8294. Printing of reports**

8294. The reports, exhibits, and proposed legislature measures shall be printed by the State Printing Office under the supervision of the commission. The exhibits shall be so printed as to show in the readiest manner the changes and repeals proposed by the commission.

**§ 8295. Cooperation with legislative committees**

8295. The commission shall confer and cooperate with any legislative committee on revision of the law and may contract with any committee for the rendition of service, by either for the other, in the work of revision.

**§ 8296. Cooperation with bar and other associations**

8296. The commission may cooperate with any bar association or other learned, professional, or scientific association, institution or foundation in any manner suitable for the fulfillment of the purposes of this article.

**§ 8297. Research contracts**

8297. The commission may, with the approval of the Director of General Services, enter into, amend and terminate contracts with colleges, universities, schools of law or other research institutions, or with qualified individuals for the purposes of research.

## APPENDIX 2

### CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below.\* Each of these topics has been authorized for Commission study by the Legislature. For the current authorizing resolution, see 1992 Cal. Stat. res. ch. 72.

**1. Creditors' remedies.** Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 15-16 (1957).)

**2. Probate Code.** Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**3. Real and personal property.** Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic. Expanded in 1988 Cal Stat. res. ch. 81.)

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\* For additional matters authorized for Commission study, see note 9 *supra*.

**4. Family law.** Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

**5. Prejudgment interest.** Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

**6. Class actions.** Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

**7. Offers of compromise.** Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

**8. Discovery in civil cases.** Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

**9. Procedure for removal of invalid liens.** Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**10. Special assessment liens for public improvements.** Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**11. Injunctions.** Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

**12. Involuntary dismissal for lack of prosecution.** Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

**13. Statutes of limitation for felonies.** Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

**14. Rights and disabilities of minors and incompetent persons.** Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

**15. Child custody, adoption, guardianship, and related matters.** Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956, at 29-31 (1957).)

**16. Evidence.** Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)

**17. Arbitration.** Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

**18. Modification of contracts.** Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957, at 21 (1957).)

**19. Governmental liability.** Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

**20. Inverse condemnation.** Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

**21. Liquidated damages.** Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

**22. Parol evidence rule.** Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

**23. Pleadings in civil actions.** Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

**24. Administrative law.** Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

**25. Attorney's fees.** Whether there should be changes in the law relating to the payment and the shifting of attorney's fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)

**26. Family Relations Code.** Conduct a careful review of all statutes relating to the adjudication of child and family civil proceedings, with specified exceptions, and make recommendations to the Legislature regarding the establishment of a Family Relations Code. (Authorized by 1989 Cal. Stat. res. ch. 70.)

## APPENDIX 3

### LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

| <b>Recommendation</b>  | <b>Action by Legislature</b>  |
|--|---|
| 1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 12 (1957)   | Enacted. 1955 Cal. Stat. chs. 799, 877  |
| 2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 50 (1957)               | Enacted. 1955 Cal. Stat. ch. 1183   |
| 3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957 at 13 (1957); 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956, at 13 (1957) | Enacted. 1957 Cal. Stat. ch. 456  |
| 4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm'n Reports, at A-1 (1957)  | Enacted. 1957 Cal. Stat. ch. 139  |
| 5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm'n Reports, at B-1 (1957)                                 | Enacted. 1957 Cal. Stat. ch. 540  |
| 6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm'n Reports, at C-1 (1957)  | Not enacted. But see Code Civ. Proc. § 612.5, enacting substance of this recommendation.                      |
| 7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm'n Reports, at D-1 (1957)  | Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 1261. |
| 8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm'n Reports, at E-1 (1957)                             | Enacted. 1957 Cal. Stat. ch. 490  |

| Recommendation  | Action by Legislature  |
|---|--|
| 9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports, at F-1 (1957)  | Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970. |
| 10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 14 (1959)            | Enacted. 1959 Cal. Stat. ch. 470   |
| 11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm'n Reports, at H-1 (1957)   | Enacted. 1957 Cal. Stat. ch. 102   |
| 12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm'n Reports, at I-1 (1957)   | Enacted. 1957 Cal. Stat. ch. 249   |
| 13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm'n Reports, at J-1 (1957)   | No legislation recommended.  |
| 14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm'n Reports, at K-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 16 (1959) | Enacted. 1959 Cal. Stat. ch. 468   |
| 15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm'n Reports, at L-1 (1957)   | Not enacted.   |
| 16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm'n Reports, at M-1 (1957)   | Enacted. 1957 Cal. Stat. ch. 1498  |
| 17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 20 (1959)   | Enacted. 1959 Cal. Stat. ch. 501   |
| 18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 21 (1959)   | Enacted. 1959 Cal. Stat. ch. 500   |
| 19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959, at 29 (1959)   | No legislation recommended.  |

| <b>Recommendation</b>  | <b>Action by Legislature</b>  |
|--|---|
| 20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports, at A-1 (1959)   | Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., Art. XI, § 10 (1960)                       |
| 21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports, at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)              | Enacted. 1974 Cal. Stat. ch. 425  |
| 22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports, at C-1 (1959)  | Enacted. 1959 Cal. Stat. ch. 528  |
| 23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports, at D-1 (1959)   | Enacted. 1959 Cal. Stat. ch. 122  |
| 24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports, at E-1 (1959) | Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving. |
| 25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports, at F-1 (1959)   | Enacted. 1959 Cal. Stat. ch. 469  |
| 26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports, at G-1 (1959)   | Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation.                                      |
| 27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at A-1 (1961)   | Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation.                                |
| 28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at B-1 (1961)                               | Enacted. 1961 Cal. Stat. chs. 1612, 1613  |
| 29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports, at C-1 (1961)                         | Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation.                               |
| 30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports, at D-1 (1961)  | Enacted. 1961 Cal. Stat. ch. 589  |

| Recommendation   | Action by Legislature   |
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| 31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports, at E-1 (1961) | Enacted. 1961 Cal. Stat. ch. 1616   |
| 32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports, at F-1 (1961)  | Enacted. 1961 Cal. Stat. ch. 657  |
| 33. <i>Arbitration</i> , Cal. L. Revision Comm'n Reports, at G-1 (1961)  | Enacted. 1961 Cal. Stat. ch. 461  |
| 34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports, at H-1 (1961)   | Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i> ) which was enacted. |
| 35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports, at I-1 (1961)                   | Enacted. 1961 Cal. Stat. ch. 636  |
| 36. <i>Notice of Alibi in Criminal Actions</i> , 3 Cal. L. Revision Comm'n Reports, at J-1 (1961)  | Not enacted.  |
| 37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)                     | Enacted. 1967 Cal. Stat. ch. 1104   |
| 38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)   | Enacted. 1963 Cal. Stat. ch. 1681   |
| 39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)                              | Enacted. 1963 Cal. Stat. ch. 1715   |
| 40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)   | Enacted. 1963 Cal. Stat. ch. 1682   |
| 41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)   | Enacted. 1963 Cal. Stat. ch. 1683   |

| Recommendation   | Action by Legislature  |
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| 42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)                      | Enacted. 1965 Cal. Stat. ch. 1527  |
| 43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)   | Enacted. 1963 Cal. Stat. ch. 1684  |
| 44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)  | Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029                                     |
| 45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)  | Enacted. 1965 Cal. Stat. ch. 299   |
| 46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)  | Enacted. 1965 Cal. Stat. ch. 653   |
| 47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)  | Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69. |
| 48. <i>Evidence — Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)   | Enacted. 1967 Cal. Stat. ch. 262   |
| 49. <i>Evidence — Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)   | Enacted. 1967 Cal. Stat. ch. 703   |
| 50. <i>Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967) | Enacted. 1968 Cal. Stat. chs. 457, 458   |
| 51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)  | Enacted. 1967 Cal. Stat. ch. 702   |
| 52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)  | Enacted. 1967 Cal. Stat. ch. 72  |

| Recommendation  | Action by Legislature  |
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| 53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969) | Enacted. 1970 Cal. Stat. ch. 89  |
| 54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)                                       | Enacted. 1968 Cal. Stat. ch. 150   |
| 55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)  | Enacted. 1967 Cal. Stat. ch. 1324  |
| 56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)  | Enacted. 1968 Cal. Stat. chs. 247, 356   |
| 57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)  | Enacted. 1968 Cal. Stat. ch. 133   |
| 58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)  | Enacted. 1968 Cal. Stat. ch. 132   |
| 59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)  | Enacted. 1970 Cal. Stat. ch. 104   |
| 60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)   | Enacted. 1969 Cal. Stat. ch. 115   |
| 61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)  | Enacted. 1969 Cal. Stat. ch. 114   |
| 62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)  | Enacted. 1970 Cal. Stat. ch. 312   |
| 63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)  | Enacted. 1970 Cal. Stat. ch. 417   |
| 64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)  | Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397; 1972 Cal. Stat. ch. 888 |

| Recommendation  | Action by Legislature  |
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| 65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)   | Enacted. 1969 Cal. Stat. ch. 156   |
| 66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)   | Enacted. 1969 Cal. Stat. chs. 113, 155                                     |
| 67. <i>Evidence Code — Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)   | Vetoed. But see 1970 Cal. Stat. chs. 1396, 1397                            |
| 68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)   | Enacted. 1970 Cal. Stat. ch. 618   |
| 69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)  | Enacted. 1970 Cal. Stat. ch. 720   |
| 70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)   | Enacted in part. 1970 Cal. Stat. chs. 662, 1099                            |
| 71. "Vesting" of Interests Under Rule Against Perpetuities, 9 Cal. L. Revision Comm'n Reports 901 (1969)  | Enacted. 1970 Cal. Stat. ch. 45  |
| 72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)  | Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828   |
| 73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978) | Enacted in part. 1978 Cal. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66 |
| 74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)   | Enacted. 1970 Cal. Stat. ch. 41  |

| Recommendation   | Action by Legislature  |
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| 75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)                        | Enacted. 1971 Cal. Stat. ch. 140   |
| 76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)            | Enacted. 1971 Cal. Stat. ch. 1607  |
| 77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)  | Enacted. 1973 Cal. Stat. ch. 20  |
| 78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)  | Enacted. 1973 Cal. Stat. ch. 526   |
| 79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974) | Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25. |
| 80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)                       | Enacted. 1974 Cal. Stat. ch. 211   |
| 81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)  | Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200.                                   |
| 82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)   | Enacted. 1974 Cal. Stat. chs. 331, 332   |
| 83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)                                       | Enacted. 1972 Cal. Stat. ch. 73  |
| 84. <i>Evidence — Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)                     | Enacted. 1972 Cal. Stat. ch. 764   |
| 85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)                          | Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i> ) which was enacted.        |
| 86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)       | Enacted. 1974 Cal. Stat. ch. 227   |

| Recommendation   | Action by Legislature  |
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| 87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1735 (1976) | Enacted. 1977 Cal. Stat. ch. 198   |
| 88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)  | Enacted. 1975 Cal. Stat. ch. 285   |
| 89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)   | Enacted. 1975 Cal. Stat. ch. 301   |
| 90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)   | Enacted. 1975 Cal. Stat. ch. 318   |
| 91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)   | Enacted. 1974 Cal. Stat. ch. 426   |
| 92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)   | Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275   |
| 93. <i>Eminent Domain — Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)   | Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276                               |
| 94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)                              | Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109  |
| 95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)   | Enacted. 1976 Cal. Stat. ch. 73  |
| 96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)  | Enacted. 1976 Cal. Stat. ch. 437   |
| 97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)  | Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i> ) which was enacted. |

| Recommendation   | Action by Legislature   |
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| 98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)  | Not enacted.  |
| 99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)   | Enacted. 1976 Cal. Stat. ch. 145  |
| 100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)   | Enacted. 1976 Cal. Stat. ch. 143  |
| 101. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)  | Enacted in part (utility easements).<br>1976 Cal. Stat. ch. 994                                   |
| 102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)   | Enacted. 1976 Cal. Stat. ch. 144  |
| 103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)   | Enacted. 1985 Cal. Stat. ch. 100  |
| 104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)   | Enacted. 1976 Cal. Stat. ch. 888  |
| 105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)  | Enacted. 1977 Cal. Stat. ch. 232  |
| 106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)   | Enacted. 1977 Cal. Stat. ch. 49   |
| 107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)   | Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978. |
| 108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)   | Enacted. 1977 Cal. Stat. ch. 155  |
| 109. <i>Attachment Law — Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978) | Enacted. 1977 Cal. Stat. ch. 499  |

| Recommendation   | Action by Legislature   |
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| 110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)  | Enacted. 1978 Cal. Stat. ch. 286  |
| 111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)   | Enacted. 1978 Cal. Stat. ch. 151  |
| 112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)   | Enacted in part. 1978 Cal. Stat. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .         |
| 113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)  | Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028). |
| 114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)   | Enacted. 1978 Cal. Stat. ch. 150  |
| 115. <i>Attachment Law — Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978) | Enacted. 1978 Cal. Stat. ch. 273  |
| 116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)   | Enacted. 1978 Cal. Stat. ch. 266  |
| 117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)  | Enacted. 1979 Cal. Stat. ch. 31   |
| 118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)   | Enacted. 1980 Cal. Stat. ch. 114  |
| 119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)  | Enacted. 1979 Cal. Stat. chs. 165, 726, 730   |
| 120. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)  | Enacted. 1979 Cal. Stat. ch. 177  |
| 121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)   | Enacted. 1979 Cal. Stat. ch. 568  |

| Recommendation   | Action by Legislature             |
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| 122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)                     | Enacted. 1980 Cal. Stat. ch. 122  |
| 123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)                                      | Enacted. 1980 Cal. Stat. ch. 135  |
| 124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)                   | Enacted. 1980 Cal. Stat. ch. 1050 |
| 125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)   | Enacted. 1980 Cal. Stat. ch. 44   |
| 126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)                       | Enacted. 1980 Cal. Stat. ch. 682  |
| 127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980) | Enacted. 1980 Cal. Stat. ch. 381  |
| 128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)  | Enacted. 1980 Cal. Stat. ch. 119  |
| 129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)                   | Enacted. 1980 Cal. Stat. ch. 215  |
| 130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)   | Enacted. 1980 Cal. Stat. ch. 89   |
| 131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)  | Enacted. 1980 Cal. Stat. ch. 124  |
| 132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)   | Enacted. 1982 Cal. Stat. ch. 150  |
| 133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)   | Enacted. 1980 Cal. Stat. ch. 123  |

| Recommendation  | Action by Legislature   |
|---|---|
| 134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)  | Enacted. 1980 Cal. Stat. ch. 600  |
| 135. <i>Guardianship-Conservatorship</i> (technical change), 15 Cal. L. Revision Comm'n Reports 1427 (1980)                       | Enacted. 1980 Cal. Stat. ch. 246  |
| 136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)                         | Enacted. 1981 Cal. Stat. ch. 9  |
| 137. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)                                     | Enacted. 1982 Cal. Stat. chs. 497, 1364   |
| 138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)                                 | Enacted. 1981 Cal. Stat. ch. 511  |
| 139. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982) | Enacted in part (pay-on-death accounts) 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92. Substance of balance enacted. 1989 Cal. Stat. ch. 397 (banks and savings and loan associations) (item 229 <i>infra</i> ) |
| 140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)                        | Enacted. 1981 Cal. Stat. ch. 63   |
| 141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)                                      | Enacted. 1981 Cal. Stat. ch. 217  |
| 142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)    | Enacted. 1981 Cal. Stat. ch. 139  |
| 143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)                                 | Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44  |
| 144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)                                     | Enacted. 1982 Cal. Stat. ch. 187  |
| 145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)                                     | Enacted. 1982 Cal. Stat. ch. 1268   |

| Recommendation  | Action by Legislature                  |
|---|--|
| 146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)  | Enacted. 1982 Cal. Stat. chs. 517, 998 |
| 147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)  | Enacted. 1982 Cal. Stat. ch. 1198      |
| 148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)   | Enacted. 1982 Cal. Stat. ch. 182       |
| 149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)   | Enacted. 1983 Cal. Stat. ch. 201       |
| 150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)  | Enacted. 1983 Cal. Stat. ch. 6         |
| 151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)   | Enacted. 1983 Cal. Stat. ch. 72        |
| 152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)  | Enacted. 1983 Cal. Stat. ch. 17        |
| 153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)   | Enacted. 1983 Cal. Stat. ch. 842       |
| 154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982), 17 Cal. L. Revision Comm'n Reports 863 (1984) | Enacted. 1983 Cal. Stat. ch. 342       |
| 155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)  | Enacted. 1983 Cal. Stat. ch. 155       |
| 156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)   | Enacted. 1983 Cal. Stat. ch. 18        |
| 157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)  | Enacted. 1983 Cal. Stat. ch. 107       |

| Recommendation  | Action by Legislature   |
|---|---|
| 158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)               | Enacted. 1984 Cal. Stat. ch. 1671   |
| 159. <i>Durable Power of Attorney for Health Care Decisions</i> , 17 Cal. L. Revision Comm'n Reports 101 (1984) | Enacted. 1983 Cal. Stat. ch. 1204   |
| 160. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)                  | Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i> ). |
| 161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)               | Enacted. 1983 Cal. Stat. ch. 52   |
| 162. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)    | Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733  |
| 163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)               | Enacted. 1984 Cal. Stat. ch. 1661   |
| 164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)        | Enacted. 1984 Cal. Stat. ch. 156  |
| 165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)           | Enacted. 1984 Cal. Stat. ch. 249  |
| 166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)               | Enacted. 1984 Cal. Stat. ch. 463  |
| 167. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)                   | Not enacted.  |
| 168. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)                 | Enacted. 1984 Cal. Stat. ch. 1270   |
| 169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)     | Enacted. 1984 Cal. Stat. ch. 451  |
| 170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)      | Enacted. 1984 Cal. Stat. ch. 451  |

| Recommendation  | Action by Legislature   |
|---|---|
| 171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)                                 | Enacted in part. See 1989 Cal. Stat. ch. 544 (intestate succession) (item 227 <i>infra</i> ); 1990 Cal. Stat. ch. 710 (statutory will) (item 240 <i>infra</i> ) |
| 172. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)                                      | Not enacted.  |
| 173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984) | Enacted. 1984 Cal. Stat. ch. 493  |
| 174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)                  | Enacted. 1984 Cal. Stat. ch. 451  |
| 175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)                       | Enacted. 1984 Cal. Stat. ch. 527  |
| 176. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)                         | Not enacted.  |
| 177. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)      | Enacted. 1984 Cal. Stat. ch. 892  |
| 178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)                     | Enacted. 1984 Cal. Stat. ch. 243  |
| 179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)      | Enacted. 1984 Cal. Stat. chs. 312 (health care), 602 (general power of attorney).   |
| 180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)                   | Enacted. 1984 Cal. Stat. ch. 1705   |
| 181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)                          | Enacted. 1984 Cal. Stat. ch. 519  |
| 182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)                 | Enacted. 1984 Cal. Stat. ch. 20   |
| 183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)                              | Enacted. 1984 Cal. Stat. ch. 240  |

| Recommendation  | Action by Legislature            |
|---|----------------------------------|
| 184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)   | Enacted. 1984 Cal. Stat. ch. 538 |
| 185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)                                       | Enacted. 1984 Cal. Stat. ch. 241 |
| 186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)                 | Enacted. 1985 Cal. Stat. ch. 362 |
| 187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)         | Enacted. 1985 Cal. Stat. ch. 982 |
| 188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)     | Enacted. 1985 Cal. Stat. ch. 362 |
| 189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)                             | Enacted. 1985 Cal. Stat. ch. 359 |
| 190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)                         | Enacted. 1985 Cal. Stat. ch. 41  |
| 191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)             | Enacted. 1985 Cal. Stat. ch. 90  |
| 192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)                        | Enacted. 1985 Cal. Stat. ch. 731 |
| 193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)                          | Enacted. 1985 Cal. Stat. ch. 157 |
| 194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)   | Enacted. 1985 Cal. Stat. ch. 157 |
| 195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)                            | Enacted. 1985 Cal. Stat. ch. 982 |
| 196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986) | Enacted. 1985 Cal. Stat. ch. 982 |

| Recommendation  | Action by Legislature  |
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| 197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)                    | Enacted. 1985 Cal. Stat. ch. 403   |
| 198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986) | Enacted. 1985 Cal. Stat. ch. 362   |
| 199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)         | One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49 |
| 200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)                                 | Enacted. 1986 Cal. Stat. ch. 820.  |
| 201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986) | Enacted. 1986 Cal. Stat. ch. 783   |
| 202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)                       | Enacted. 1986 Cal. Stat. ch. 783   |
| 203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)                    | Enacted. 1986 Cal. Stat. ch. 783   |
| 204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)   | Enacted. 1987 Cal. Stat. ch. 923   |
| 205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)       | Enacted. 1987 Cal. Stat. ch. 923   |
| 206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)         | Enacted. 1987 Cal. Stat. ch. 128   |
| 207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)                       | Enacted. 1987 Cal. Stat. ch. 923   |
| 208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)                    | Enacted. 1987 Cal. Stat. ch. 923   |
| 209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)     | Enacted. 1987 Cal. Stat. ch. 923   |
| 210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)                 | Enacted. 1987 Cal. Stat. ch. 923   |

| Recommendation   | Action by Legislature             |
|--|-----------------------------------|
| 211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)                    | Enacted. 1987 Cal. Stat. ch. 923  |
| 212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)                 | Enacted. 1987 Cal. Stat. ch. 923  |
| 213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)        | Enacted. 1988 Cal. Stat. ch. 1199 |
| 214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)                    | Enacted. 1988 Cal. Stat. ch. 1199 |
| 215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)              | Enacted. 1988 Cal. Stat. ch. 1199 |
| 216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)                                  | Enacted. 1988 Cal. Stat. ch. 1199 |
| 217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)                                   | Enacted. 1988 Cal. Stat. ch. 1199 |
| 218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)             | Enacted. 1988 Cal. Stat. ch. 1199 |
| 219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)              | Enacted. 1988 Cal. Stat. ch. 1199 |
| 220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)                 | Enacted. 1988 Cal. Stat. ch. 1199 |
| 221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)                   | Enacted. 1988 Cal. Stat. ch. 1199 |
| 222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988) | Enacted. 1988 Cal. Stat. ch. 1199 |
| 223. <i>1988 Probate Cleanup Bill</i> , see 19 Cal. L. Revision Comm'n Reports 1167, 1191–1200 (1988)  | Enacted. 1988 Cal. Stat. ch. 113  |
| 224. <i>Authority of the Law Revision Commission</i> , 19 Cal. L. Revision Comm'n Reports 1162 (1988)  | Enacted. 1989 Cal. Stat. ch. 152  |

| Recommendation   | Action by Legislature  |
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| 225. <i>Creditors' Remedies</i> , 19 Cal. L. Revision Comm'n Reports 1251 (1988)   | Enacted. 1989 Cal. Stat. ch. 1416  |
| 226. <i>No Contest Clauses</i> , 20 Cal. L. Revision Comm'n Reports 7 (1990)   | Enacted. 1989 Cal. Stat. ch. 544   |
| 227. <i>120-Hour Survival Requirement</i> , 20 Cal. L. Revision Comm'n Reports 21 (1990)                                       | Enacted. 1989 Cal. Stat. ch. 544   |
| 228. <i>Compensation of Attorneys and Personal Representatives</i> , 20 Cal. L. Revision Comm'n Reports 31 (1990)              | Enacted except for portion relating to compensation of attorneys. 1990 Cal. Stat. ch. 79 |
| 229. <i>Multiple-Party Accounts</i> , 20 Cal. L. Revision Comm'n Reports 95 (1990)   | Enacted. 1989 Cal. Stat. ch. 397   |
| 230. <i>Notice to Creditors</i> , 20 Cal. L. Revision Comm'n Reports 165 (1990); 20 Cal. L. Revision Comm'n Reports 507 (1990) | Enacted in part. 1989 Cal. Stat. ch. 544; Balance enacted. 1990 Cal. Stat. ch. 140       |
| 231. <i>1989 Probate Cleanup Bill</i> , see 20 Cal. L. Revision Comm'n Reports 201, 227-232 (1990)                             | Enacted. 1989 Cal. Stat. ch. 21  |
| 232. <i>Brokers' Commissions on Probate Sales</i> , 20 Cal. L. Revision Comm'n Reports 237-242 (1990)                          | Enacted. 1989 Cal. Stat. ch. 544   |
| 233. <i>Bonds of Guardians and Conservators</i> , 20 Cal. L. Revision Comm'n Reports 235 (1990)                                | Enacted. 1989 Cal. Stat. ch. 544   |
| 234. <i>Commercial Real Property Leases</i> , 20 Cal. L. Revision Comm'n Reports 251 (1990)                                    | Enacted. 1989 Cal. Stat. ch. 982   |
| 235. <i>Trustees' Fees</i> , 20 Cal. L. Revision Comm'n Reports 279 (1990)   | Enacted. 1990 Cal. Stat. ch. 79  |
| 236. <i>Springing Powers of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 405 (1990)                                       | Enacted. 1990 Cal. Stat. ch. 986   |
| 237. <i>Uniform Statutory Form Powers of Attorney Act</i> , 20 Cal. L. Revision Comm'n Reports 415 (1990)                      | Enacted. 1990 Cal. Stat. ch. 986   |
| 238. <i>Disposition of Small Estate by Public Administrator</i> , 20 Cal. L. Revision Comm'n Reports 529 (1990)                | Enacted. 1990 Cal. Stat. ch. 324   |

| Recommendation  | Action by Legislature             |
|---|-----------------------------------|
| 239. <i>Court-Authorized Medical Treatment</i> , 20 Cal. L. Revision Comm'n Reports 537 (1990)  | Enacted. 1990 Cal. Stat. ch. 710  |
| 240. <i>Survival Requirement for Beneficiary of Statutory Will</i> , 20 Cal. L. Revision Comm'n Reports 549 (1990)                                    | Enacted. 1990 Cal. Stat. ch. 710  |
| 241. <i>Execution or Modification of Lease Without Court Order</i> , 20 Cal. L. Revision Comm'n Reports 557 (1990)                                    | Enacted. 1990 Cal. Stat. ch. 710  |
| 242. <i>Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding</i> , 20 Cal. L. Revision Comm'n Reports 565 (1990) | Enacted. 1990 Cal. Stat. ch. 710  |
| 243. <i>Repeal of Probate Code Section 6402.5 (In-Law Inheritance)</i> , 20 Cal. L. Revision Comm'n Reports 571 (1990)                                | Not enacted.                      |
| 244. <i>Access to Decedent's Safe Deposit Box</i> , 20 Cal. L. Revision Comm'n Reports 597 (1990); 20 Cal. L. Revision Comm'n Reports 2859 (1990)     | Enacted. 1991 Cal. Stat. ch. 1055 |
| 245. <i>Priority of Conservator or Guardian for Appointment as Administrator</i> , 20 Cal. L. Revision Comm'n Reports 607 (1990)                      | Enacted. 1990 Cal. Stat. ch. 710  |
| 246. <i>New Probate Code</i> , 20 Cal. L. Revision Comm'n Reports 1001 (1990)   | Enacted. 1990 Cal. Stat. ch. 79   |
| 247. <i>Notice in Probate Where Address Unknown</i> , 20 Cal. L. Revision Comm'n Reports 2245 (1990)  | Enacted. 1990 Cal. Stat. ch. 710  |
| 248. <i>Jurisdiction of Superior Court in Trust Matters</i> , 20 Cal. L. Revision Comm'n Reports 2253 (1990)  | Enacted. 1990 Cal. Stat. ch. 710  |
| 249. <i>Uniform Management of Institutional Funds Act</i> , 20 Cal. L. Revision Comm'n Reports 2265 (1990)  | Enacted. 1990 Cal. Stat. ch. 1307 |

| Recommendation  | Action by Legislature             |
|---|-----------------------------------|
| 250. <i>Remedies for Breach of Assignment or Sublease Covenant</i> , 20 Cal. L. Revision Comm'n Reports 2405 (1990)   | Enacted. 1991 Cal. Stat. ch. 67   |
| 251. <i>Use Restrictions</i> , 20 Cal. L. Revision Comm'n Reports 2421 (1990)   | Enacted. 1991 Cal. Stat. ch. 67   |
| 252. <i>Uniform Statutory Rule Against Perpetuities</i> , 20 Cal. L. Revision Comm'n Reports 2501 (1990)  | Enacted. 1991 Cal. Stat. ch. 156  |
| 253. <i>Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care</i> , 20 Cal. L. Revision Comm'n Reports 2601 (1990)  | Enacted. 1991 Cal. Stat. ch. 896  |
| 254. <i>Recognition of Agent's Authority Under Statutory Form Power of Attorney</i> , 20 Cal. L. Revision Comm'n Reports 2629 (1990); 22 Cal. L. Revision Comm'n Reports 965 (1992) | Enacted. 1992 Cal. Stat. ch. 178  |
| 255. <i>Debts That Are Contingent, Disputed, or Not Due</i> , 20 Cal. L. Revision Comm'n Reports 2707 (1990)  | Enacted. 1991 Cal. Stat. ch. 1055 |
| 256. <i>Remedies of Creditor Where Personal Representative Fails to Give Notice</i> , 20 Cal. L. Revision Comm'n Reports 2719 (1990)  | Enacted. 1991 Cal. Stat. ch. 1055 |
| 257. <i>Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)</i> , 20 Cal. L. Revision Comm'n Reports 2729 (1990)   | Enacted. 1991 Cal. Stat. ch. 1055 |
| 258. <i>Disposition of Small Estate Without Probate</i> , 20 Cal. L. Revision Comm'n Reports 2737 (1990)  | Enacted. 1991 Cal. Stat. ch. 1055 |
| 259. <i>Right of Surviving Spouse to Dispose of Community Property</i> , 20 Cal. L. Revision Comm'n Reports 2769 (1990)   | Enacted. 1991 Cal. Stat. ch. 1055 |
| 260. <i>Litigation Involving Decedents</i> , 20 Cal. L. Revision Comm'n Reports 2785 (1990); 22 Cal. L. Revision Comm'n Reports 895 (1992)  | Enacted. 1992 Cal. Stat. ch. 178  |

| Recommendation   | Action by Legislature             |
|--|-----------------------------------|
| 261. <i>Compensation in Guardianship and Conservatorship Proceedings</i> , 20 Cal. L. Revision Comm'n Reports 2837 (1990); 21 Cal. L. Revision Comm'n Reports 227 (1991) | Enacted. 1992 Cal. Stat. ch. 572  |
| 262. <i>Recognition of Trustees' Powers</i> , 20 Cal. L. Revision Comm'n Reports 2849 (1990)   | Enacted. 1992 Cal. Stat. ch. 178  |
| 263. <i>Gifts in View of Impending Death</i> , 20 Cal. L. Revision Comm'n Reports 2869 (1990)  | Enacted. 1991 Cal. Stat. ch. 1055 |
| 264. <i>TOD Beneficiary Designation for Vehicles and Certain Other State-Registered Property</i> , 20 Cal. L. Revision Comm'n Reports 2883 (1990)                        | Enacted. 1991 Cal. Stat. ch. 1055 |
| 265. <i>1991 General Probate Bill</i> (miscellaneous provisions), see 20 Cal. L. Revision Comm'n Reports 2907 (1990)   | Enacted. 1991 Cal. Stat. ch. 1055 |
| 266. <i>1991 Probate Urgency Clean-up Bill</i> , see 20 Cal. L. Revision Comm'n Reports 2909 (1990)  | Enacted. 1991 Cal. Stat. ch. 82   |
| 267. <i>Application of Marketable Title Statute to Executory Interests</i> , 21 Cal. L. Revision Comm'n Reports 53 (1991)  | Enacted. 1991 Cal. Stat. ch. 156  |
| 268. <i>Relocation of Powers of Appointment Statute</i> , 21 Cal. L. Revision Comm'n Reports 91 (1991)   | Enacted. 1992 Cal. Stat. ch. 30   |
| 269. <i>Miscellaneous Creditors' Remedies</i> , 21 Cal. L. Revision Comm'n Reports 135 (1991)  | Enacted. 1992 Cal. Stat. ch. 283  |
| 270. <i>Nonprobate Transfers of Community Property</i> , 21 Cal. L. Revision Comm'n Reports 163 (1991)   | Enacted. 1992 Cal. Stat. ch. 51   |
| 271. <i>Notice of Trustees' Fees</i> , 21 Cal. L. Revision Comm'n Reports 191 (1991)   | Enacted. 1992 Cal. Stat. ch. 178  |
| 272. <i>Nonprobate Transfer to Trustee Named in Will</i> , 21 Cal. L. Revision Comm'n Reports 201 (1991)   | Enacted. 1992 Cal. Stat. ch. 178  |

| Recommendation   | Action by Legislature                  |
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| 273. <i>Preliminary Distribution Without Court Supervision</i> 21 Cal. L. Revision Comm'n Reports 209 (1991)             | Enacted. 1992 Cal. Stat. ch. 178       |
| 274. <i>Transfer of Conservatorship Property to Trust</i> , 21 Cal. L. Revision Comm'n Reports 227 (1991)                | Enacted. 1992 Cal. Stat. ch. 572       |
| 275. <i>Standing To Sue for Wrongful Death</i> , 22 Cal. L. Revision Comm'n Reports 955 (1992)                           | Enacted. 1992 Cal. Stat. ch. 178       |
| 276. <i>Family Code</i> , 22 Cal. L. Revision Comm'n Reports 1 (1992)  | Enacted. 1992 Cal. Stat. chs. 162, 163 |
| 277. <i>Special Needs Trust for Disabled Minor or Incompetent Person</i> , 22 Cal. L. Revision Comm'n Reports 989 (1992) | Enacted. 1992 Cal. Stat. ch. 355       |
| 278. <i>1992 General Probate Bill</i> (miscellaneous provisions), see 22 Cal. L. Revision Comm'n Reports 977 (1990)      | Enacted. 1992 Cal. Stat. ch. 178       |

**APPENDIX 4**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

REVISED RECOMMENDATION

Litigation Involving Decedents

April 1992

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

**NOTE**

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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COLIN W. WIED

April 23, 1992

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation would modernize and reorganize the statutes in the Code of Civil Procedure concerning survival and continuation of actions after the death of parties. The recommendation would also permit an action to be continued by a decedent's successors in interest without the necessity of opening a probate proceeding and appointing a personal representative, subject to certain limitations.

This study is authorized by Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 33 of the Statutes of 1991.

Respectfully submitted,

Edwin K. Marzec  
*Chairperson*



## LITIGATION INVOLVING DECEDENTS

In the course of revising the Probate Code, the Law Revision Commission recommended several changes in the law relating to litigation involving decedents.<sup>1</sup> The 1987 recommendation on this subject noted that the Commission “anticipates a future recommendation that treats the entire body of law in a comprehensive manner.”<sup>2</sup> The statutes concerning litigation involving decedents that appeared in the Probate Code were revised on recommendation of the Commission, but related provisions in the Code of Civil Procedure concerning survival and continuation of actions, statutes of limitations, and proper parties have not been subject to comprehensive review. This recommendation would complete the revision of this area of the law.<sup>3</sup>

Some of the provisions in the Code of Civil Procedure overlap or disagree with the Probate Code.<sup>4</sup> The rules in the Code of Civil Procedure were developed before the increasing importance of nonprobate transfers was recognized. Consequently, unless a specific procedure in the Probate Code applies to the situation, the law may be unclear. The proposed law consolidates and reorganizes the existing statutes in a comprehensive fashion. In addition to making

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1. See Prob. Code §§ 550-555 (liability of decedent covered by insurance), 9350-9399 (claims in litigation). This revision resulted in the repeal of former Probate Code Sections 707, 709, 709.1, 716, 720, and 721, and the amendment of Code of Civil Procedure Sections 353 and 385. See 1988 Cal. Stat. ch. 1199.

2. See *Recommendation Relating to Litigation Involving Decedents*, 19 Cal. L. Revision Comm'n Reports 899, 903 (1988).

3. This revised recommendation supersedes an earlier recommendation on this subject. See *Recommendation Relating to Litigation Involving Decedents*, 20 Cal. L. Revision Comm'n Reports 2849 (1990). This revised recommendation reflects changes to the section numbers of the main body of sections made in the legislative process. See 1992 Cal. Stat. ch. 178. For additional background, see *Standing To Sue for Wrongful Death*, 22 Cal. L. Revision Comm'n Reports 955 (1992).

4. See, e.g., Code Civ. Proc. §§ 353, 353.5, 369, 377, 385.

technical and clarifying changes, the proposed law makes a number of significant substantive changes described below.

### *Commencement of Decedent's Cause of Action*

Existing law provides that a decedent's cause of action may be brought by the decedent's personal representative.<sup>5</sup> However, in many cases there is no administration of the decedent's estate either because of its size or because all the substantial assets pass to successors by means of nonprobate transfers. In such a situation it may not make sense to open a probate proceeding for the sole purpose of appointing a personal representative to assert the decedent's cause of action. The cause of action belongs to the decedent's heirs or devisees on the decedent's death<sup>6</sup> or rightfully passes to a successor in interest who takes property that is the subject of the litigation, e.g., by virtue of a contract provision or account agreement or by operation of law. The proposed law authorizes the successors in interest to bring an action if there is no probate.<sup>7</sup>

Because disputes may arise as to who is a successor in interest entitled to bring the action, as to the management of litigation, or as a result of the later appointment of a personal representative, the proposed law empowers the court in which the action is brought to make any order concerning parties that is appropriate to ensure proper administration of justice in the case. This would include appointing the successor in

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5. Code Civ. Proc. § 353; Prob. Code § 573. Code of Civil Procedure Section 353 actually refers to the decedent's "representatives" rather than personal representative. However, it appears that the personal representative is intended, since the provision also speaks of issuance of letters.

6. See Prob. Code § 7000.

7. This is consistent with the authority of successors in interest to continue litigation commenced by the decedent before death. See "Continuation of Decedent's Pending Action or Proceeding" *infra*.

interest as a guardian ad litem<sup>8</sup> or special administrator<sup>9</sup> to protect interests of other potential beneficiaries or successors.

*Continuation of Decedent's Pending Action or Proceeding*

If the plaintiff in an action or proceeding dies during its pendency, the litigation may be continued by the decedent's personal representative or successor in interest, with court approval.<sup>10</sup> The proposed law limits the substitution of a successor in interest as a party to cases where there is no personal representative. This limitation will simplify problems of administration and will be consistent with the treatment given persons entitled to assert the decedent's cause of action.<sup>11</sup>

*Commencement of Action on Decedent's Liability*

If a person dies against whom a cause of action for personal liability exists, the cause of action may be asserted against the decedent's personal representative.<sup>12</sup> Where the decedent has assets that pass by nonprobate transfer, however, it makes little sense to open probate proceedings and appoint a personal representative to serve as a party defendant, since the assets are not subject to the control of the personal representative. The proposed law makes clear that a cause of action may be asserted directly against the decedent's

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8. See Code Civ. Proc. §§ 372-373.5.

9. See Prob. Code §§ 8540-8547.

10. Code Civ. Proc. § 385. Although the existing statute refers to the decedent's "representative," it appears that the personal representative is intended, since the decedent's "successor in interest" is mentioned separately. While the statute states that the court "may" allow the litigation to proceed, in fact this is mandatory and the proposed law recognizes this. See, e.g., *Pepper v. Superior Court*, 76 Cal. App. 3d 252, 260-61, 142 Cal. Rptr. 759 (1977).

11. See "Commencement of Decedent's Cause of Action" *supra*.

12. Prob. Code § 573.

successors in interest where another statute provides direct liability of the successors.<sup>13</sup>

In all other cases involving the decedent's personal liability, the personal representative is the proper party. This rule ensures that all the decedent's beneficiaries are assessed their proper shares of the debt without the complications of interpleader and contribution. The rule also enables the creditor to marshal assets simply, without the need to join various recipients of the decedent's property and without complicating issues of the extent to which the property and its proceeds may be traced. And the rule provides a mechanism for ranking claims where there is more than one creditor.

#### *Continuation of Pending Action or Proceeding Against Decedent*

If a person against whom an action or proceeding is pending dies during the pendency of the litigation, the court may allow the litigation to be continued against the decedent's personal representative or successor in interest.<sup>14</sup> The proposed law makes clear that a successor in interest may be substituted as a party only where there is an express statutory provision making successors in interest personally liable; in all other cases, the personal representative should be substituted. This will ensure consistent treatment of a cause of action against a decedent whether the cause is asserted before or after the decedent's death.<sup>15</sup>

If a pending action or proceeding that survives involves matters other than personal liability of the decedent, such as title to property that passes to a successor without going through probate administration, the proposed law makes clear

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13. See Prob. Code §§ 13109 (liability of transferee of property by affidavit), 13550 (liability of surviving spouse who takes property without administration); see also Prob. Code § 18201 (liability of property in living trust).

14. Code Civ. Proc. § 385.

15. See "Commencement of Action on Decedent's Liability" *supra*.

that the successor in interest may be substituted as the party defendant.



## OUTLINE OF RECOMMENDED LEGISLATION

*New Sections in Code of Civil Procedure*

## PART 2. CIVIL ACTIONS

TITLE 2. TIME OF COMMENCING CIVIL  
ACTIONSCHAPTER 6. TIME OF COMMENCEMENT OF ACTION  
AFTER PERSON'S DEATH

- § 366.1. Limitations period after death of person entitled to bring action
- § 366.2. Limitations period after death of person against whom action may be brought

## TITLE 3. PARTIES TO CIVIL ACTIONS

## CHAPTER 4. EFFECT OF DEATH

## Article 1. Definitions

- § 377.10. Beneficiary of decedent's estate
- § 377.11. Decedent's successor in interest

## Article 2. Survival and Continuation

- § 377.20. Survival of cause of action
- § 377.21. Continuation of pending action
- § 377.22. Assignability of causes of action

## Article 3. Decedent's Cause of Action

- § 377.30. Commencement of action decedent could have commenced
- § 377.31. Continuation of pending action commenced by decedent
- § 377.32. Affidavit or declaration by decedent's successor in interest
- § 377.33. Order concerning parties
- § 377.34. Damages recoverable in action by decedent's personal representative or successor in interest
- § 377.35. Application of article

## Article 4. Cause of Action Against Decedent

- § 377.40. Assertion of cause of action against decedent
- § 377.41. Continuation of pending action against decedent
- § 377.42. Damages recoverable

§ 377.43. Application of article

Article 5. Insured Claims

§ 377.50. Action on insured claim

Article 6. Wrongful Death

§ 377.60. Parties in wrongful death action

§ 377.61. Damages in wrongful death action

§ 377.62. Joinder and consolidation of actions

## ***Conforming Changes***

### *CIVIL CODE*

§ 1363 (amended). Association to manage common interest development

§ 2225 (amended). Proceeds from sale of felon's story

§ 3294 (amended). Exemplary damages

### *CODE OF CIVIL PROCEDURE*

§ 353 (repealed). Death of party before expiration of limitation period

§ 355 (amended). Limitation on new action following reversal on appeal

## **TITLE 3. PARTIES TO CIVIL ACTIONS** *[shown in context with related unchanged provisions]*

### **CHAPTER 1 (HEADING ADDED). GENERAL PROVISIONS**

§ 367 (amended). Real party in interest

§ 368 (unchanged). *Assignment of thing in action*

§ 368.5 (added). Transfer of interest in pending action

§ 369 (amended). Fiduciaries

§ 369.5 (added). Partnership or association

### **CHAPTER 2 (HEADING ADDED). MARRIED PERSON**

§ 370 (unchanged). *Action by or against married person*

§ 371 (unchanged). *Action against both spouses*

### **CHAPTER 3 (HEADING ADDED). DISABILITY OF PARTY**

§ 372 (unchanged). *Guardian ad litem for minor or incompetent*

§ 373 (unchanged). *Procedure for appointment of guardian ad litem*

§ 373.5 (*unchanged*). *Guardian ad litem for unascertained or unborn person*

§ 374 (*repealed*). Association to manage common interest development

§ 375 (*added*). Effect of disability on pending action

§ 376 (*amended*). Injury to minor

§ 377 (*repealed*). Wrongful death

#### CHAPTER 4 (ADDED). EFFECT OF DEATH

§§ 377.10-377.62 (*added*). Effect of death [see *supra*]

#### CHAPTER 5 (HEADING ADDED). PERMISSIVE JOINDER

§ 378 (*unchanged*). *Permissive joinder of plaintiffs*

§ 379 (*unchanged*). *Permissive joinder of defendants*

§ 379.5 (*unchanged*). *Protective orders*

§ 382 (*unchanged*). *Class actions*

§ 385 (*repealed*). Disability or death

#### CHAPTER 6 (HEADING ADDED). INTERPLEADER

§ 386 (*unchanged*). *Interpleader*

§ 386.1 (*unchanged*). *Interpleader funds*

§ 386.5 (*unchanged*). *Dismissal of stakeholder*

§ 386.6 (*unchanged*). *Costs and attorney's fees*

#### CHAPTER 7 (HEADING ADDED). INTERVENTION

§ 387 (*unchanged*). *Intervention*

§ 388 (*repealed*). Partnership or association

§ 388 (*added*). Copy of environmental litigation to Attorney General

#### CHAPTER 8 (HEADING ADDED). COMPULSORY JOINDER

§ 389 (*unchanged*). *Compulsory joinder*

§ 389.5 (*unchanged*). *Joinder in action for recovery of property*

§ 389.6 (*repealed*). Copy of environmental litigation to Attorney General

§ 390 (*repealed*). Action against board of fire commissioners

### *PROBATE CODE*

§ 258 (*added*). Action for wrongful death

§ 551 (*technical amendment*). Statute of limitations

§ 573 (*repealed*). Survival of actions; continuation against personal representative

§ 6611 (*technical amendment*). Liability for unsecured debts of decedent

- § 7664 (technical amendment). Liability for decedent's unsecured debts
- § 9103 (technical amendment). Late claims
- § 9391 (technical amendment). Enforcement of security interest
- § 9392 (technical amendment). Liability of distributee
- § 13107.5 (added). Substitution of parties without probate
- § 13109 (technical amendment). Liability for decedent's unsecured debts
- § 13156 (technical amendment). Liability for decedent's unsecured debts
- § 13204 (technical amendment). Liability for decedent's unsecured debts
- § 13554 (technical amendment). Enforcement of liability
- § 19103 (technical amendment). Late claims
- § 19104 (technical amendment). Amended claim
- § 19400 (technical amendment). Liability of distributee
- § 19401 (technical amendment). Liability of distributee
- § 19402 (technical amendment). Defenses, cross-complaints, setoffs

## RECOMMENDED LEGISLATION

**Civ. Code § 1363 (amended). Association to manage common interest development**

1363. (a) A common interest development shall be managed by an association which may be incorporated or unincorporated. *The association may be referred to as a community association.*

(b) *An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.*

(c) Unless the governing documents provide otherwise, and regardless of whether the association is incorporated or unincorporated, the association ~~may exercise the~~ *has all of the following powers:*

(1) *The powers granted to a nonprofit mutual benefit corporation, as enumerated in Section 7140 of the Corporations Code, except that an unincorporated association may not adopt or use a corporate seal or issue membership certificates in accordance with Section 7313 of the Corporations Code. ~~An association, whether incorporated or unincorporated, may exercise the powers granted to an association by Section 374 of the Code of Civil Procedure and the~~*

(2) *Standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:*

(A) *Enforcement of the governing documents.*

(B) *Damage to the common areas.*

*(C) Damage to the separate interests that the association is obligated to maintain or repair.*

*(D) Damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.*

*(3) The other powers granted to the association in this title. The association may be referred to as a community association.*

~~An association, whether incorporated or unincorporated, shall prepare a budget pursuant to Section 1365 and disclose information, if requested, in accordance with Section 1368.~~

*(e)*

*(d) Meetings of the membership of the association shall be conducted in accordance with a recognized system of parliamentary procedure or such parliamentary procedures as the association may adopt. Notwithstanding any other provision of law, notice of meetings of the members shall specify those matters the board intends to present for action by the members, but, except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the association shall have access to association records in accordance with Article 3 (commencing with Section 8330) of Chapter 13 of Part 3 of Division 2 of Title 1 of the Corporations Code. Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters that relate to the formation of contracts with third parties, or personnel matters. Any matter discussed in executive session shall be generally noted in the minutes of the board of directors. In any matter relating to the discipline of an association member, the board of directors shall meet in executive session if requested by that member, and the member shall be entitled to attend the*

executive session. Whenever two or more associations have consolidated any of their functions under a joint neighborhood association or similar organization, members of each participating association shall be entitled to attend all meetings of the joint association other than executive sessions, shall be given reasonable opportunity for participation in those meetings, and shall be entitled to the same access to the joint association's records as they are to the participating association's records.

(d)

(e) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon request and upon reimbursement of the association's costs in making that distribution.

(f) Members of the association shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed or at the time of any general mailing to the entire membership of the association of their right to have copies of the minutes of meetings of the board of directors and how and where those minutes may be obtained.

**Comment.** Section 1363 is amended to incorporate the substance of former Code of Civil Procedure Section 374 in newly designated subdivision (c). The section is also reorganized for clarity. The order of some provisions is altered to preserve the material in subdivision (b), as it was designated by 1988 Cal. Stat. ch. 123, § 1, since this provision is referred to in Section 1373. The subdivision designations added in 1988 were omitted when Section 1363 was amended by 1989 Cal. Stat. ch. 571, § 1.

**Civ. Code § 2225 (technical amendment). Proceeds from sale of felon's story**

2225. (a) As used in this section:

(1) "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in California, either by a court or jury trial or by entry of a plea in court.

(2) "Felony" means a felony defined by any California or United States statute.

(3) "Representative of the felon" means any person or entity receiving proceeds by designation of that felon, or on behalf of that felon or in the stead of that felon, whether by the felon's designation or by operation of law.

(4)(A) "Beneficiary" means a person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) If a beneficiary described in subparagraph (A) has died, "beneficiary" also includes a person or estate entitled to recover damages pursuant to ~~Section 573 of the Probate Code Chapter 4 (commencing with Section 377.10)~~ of Title 3 of Part 2 of the Code of Civil Procedure.

(C) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, "beneficiary" also includes a person described in ~~Section 377~~ 377.60 of the Code of Civil Procedure and any beneficiary of a will of the decedent who had a right under that will to receive more than 25 percent of the value of the estate of the decedent.

(5) "Beneficiary's interest in the proceeds" means that portion of the proceeds necessary to pay the following:

(A) In the case of a beneficiary described in subparagraph (A) or (B) of paragraph (4), those damages which, under applicable law, other than the provisions of this section, the beneficiary has or had a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.

(B) In the case of a beneficiary described in subparagraph (C) of paragraph (4), those damages which under all the circumstances of the case may be just.

(C) A beneficiary's interest in the proceeds shall be reduced by the following amount:

(i) Money paid to the beneficiary from the Restitution Fund because of the crime for which the felon was convicted.

(ii) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.

(iii) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.

(D) In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section shall be applied to reduce the amount of the unsatisfied judgment or order.

(6) "Materials" means books, magazine or newspaper articles, movies, films, video tapes, sound recordings, interviews or appearances on television and radio stations, and live presentations of any kind.

(7) "Story" means a depiction, portrayal, or reenactment of a felony and shall not be taken to mean a passing mention of the felony, as in a footnote or bibliography.

(8) "Sale" includes lease, license, or any other transfer or alienation taking place in California or elsewhere.

(9) "Proceeds" means all fees, royalties, real property, or other consideration of any and every kind or nature received by or owing to a felon or his or her representatives for the preparation for the purpose of sale of materials, for the sale of the rights to materials, or the sale or distribution by the convicted felon of materials whether earned, accrued, or paid before or after the conviction. It includes any interest, earnings, or accretions upon proceeds, and any property received in exchange for proceeds.

(b) All proceeds from the preparation for the purpose of sale, the sale of the rights to, or the sale of materials that include or are based on the story of a felony for which a convicted felon was convicted, shall be subject to an involuntary trust for the benefit of the beneficiaries set forth in this section. That trust shall continue until five years after the time of payment of the proceeds to the felon or five years after the date of conviction, whichever is later. If an action is filed by a beneficiary to recover his or her interest in a trust within those time limitations, the trust character of the property shall continue until the conclusion of the action.

(c)(1) Any beneficiary may bring an action against a convicted felon or representative of the felon to recover his or her interest in the trust established by this section.

(2) That action may be brought in the superior court of the county in which the beneficiary resides, or of the county in which the convicted felon resides, or of the county in which proceeds are located.

(3) If the court determines that a beneficiary is entitled to proceeds pursuant to this section, the court shall order the payment from proceeds which have been received, and, if that is insufficient, from proceeds which may be received in the future.

(d) If there are two or more beneficiaries and if the available proceeds are insufficient to pay all beneficiaries, the proceeds

shall be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them.

Prior to any distribution of any proceeds to a beneficiary, the court shall determine whether the convicted felon has failed to pay any portion of a restitution fine or penalty fine imposed by a court, or any restitution imposed as a condition of probation. The court shall also determine whether the felon is obligated to reimburse a governmental entity for the costs of his or her defense and whether a portion of the proceeds is needed to cover his or her reasonable attorney's fees incurred in the criminal proceeding related to the felony, or any appeal or other related proceeding, or in the defense of the action brought under this section. The court shall order payment of these obligations prior to any payment to a beneficiary, except that 10 percent of the proceeds shall be reserved for payment to the beneficiaries.

(e)(1) The Attorney General may bring an action to require proceeds received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.

(2) An action may be brought under this subdivision within six months after the receipt of proceeds by a convicted felon or six months after the date of conviction, whichever is later.

That action may be brought in the superior court of any county in which the Attorney General has an office.

(3) If the Attorney General proves that the proceeds are proceeds from the sale of a story which are subject to an involuntary trust pursuant to this section, and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order that all proceeds be deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subdivision (d), or until the expiration of the period specified in subdivision (b).

(4) If the Attorney General prevails in an action under this subdivision, the court shall order the payment from the proceeds to the Attorney General of reasonable costs and attorney's fees.

(f) In any action brought pursuant to subdivision (d) or (e), upon motion of a party the court shall grant a preliminary injunction to prevent any waste of proceeds if it appears that the proceeds are subject to the provisions of this section, and that they may be subject to waste.

(g) Any violation of an order of a court made pursuant to this section shall be punishable as contempt.

(h) The remedies provided by this section are in addition to other remedies provided by law.

No period of limitations, except those provided by this section, shall limit the right of recovery under this section.

**Comment.** Section 2225 is amended to revise section references. These revisions are technical, nonsubstantive changes.

**Civ. Code § 3294 (technical amendment). Exemplary damages**

3294. (a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

(b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization,

ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.

(c) As used in this section, the following definitions shall apply:

(1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.

(3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

(d) Damages may be recovered pursuant to this section in an action pursuant to ~~Section 377 of the Code of Civil Procedure or Section 573 of the Probate Code~~ *Chapter 4 (commencing with Section 377.10) of Title 3 of Part 2 of the Code of Civil Procedure* based upon a death which resulted from a homicide for which the defendant has been convicted of a felony, whether or not the decedent died instantly or survived the fatal injury for some period of time. The procedures for joinder and consolidation contained in ~~Section 377~~ *Section 377.62* of the Code of Civil Procedure shall apply to prevent multiple recoveries of punitive or exemplary damages based upon the same wrongful act.

(e) The amendments to this section made by Chapter 1498 of the Statutes of 1987 apply to all actions in which the initial trial has not commenced prior to January 1, 1988.

**Comment.** Section 3294 is amended to revise section references. These revisions are technical, nonsubstantive changes.

**Code Civ. Proc. § 353 (repealed). Death of party before expiration of limitation period**

~~353. (a) If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by the person's representatives, after the expiration of that time, and within six months from the person's death.~~

~~(b) Except as provided in subdivisions (c) and (d), if a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced within one year after the date of death, and the time otherwise limited for the commencement of the action does not apply. Subject to Chapter 8 (commencing with Section 9350) of Part 4 of Division 7 of the Probate Code, the time provided in this subdivision for commencement of an action is not tolled or extended for any reason.~~

~~(c) If a person against whom an action may be brought died before July 1, 1988, and before the expiration of the time limited for the commencement of the action, and the cause of action survives, an action may be commenced against the person's representatives before the expiration of the later of the following times:~~

~~(1) July 1, 1989, or one year after the issuing of letters testamentary or of administration, whichever is the earlier time.~~

~~(2) The time limited for the commencement of the action.~~

~~(d) If a person against whom an action may be brought died on or after July 1, 1988, and before January 1, 1991, and before the expiration of the time limited for the commencement of the action, and the cause of action~~

survives, an action may be commenced before the expiration of the later of the following times:

(1) January 1, 1992.

(2) One year after the issuing of letters testamentary or of administration, or the time otherwise limited for the commencement of the action, whichever is the later time.

**Comment.** Subdivision (a) of former Section 353 is restated without substantive change in Sections 366.1 (limitations period after death of person entitled to bring action) and 377.30 (commencement of decedent's cause of action). See also Section 377.20 (survival of cause of action).

Subdivision (b) is restated without substantive change in Sections 366.2(a)-(b) and 377.40. See Comments to Sections 366.2 & 377.40.

Subdivisions (c) and (d) are not continued in the new statute because they served their purposes before the repeal of Section 353 and the enactment of the superseding statute became effective. The repeal of former Section 353 does not have any effect on the application of subdivisions (c) and (d) in the cases to which they applied. See Section 366.2(c) & Comment.

**Code Civ. Proc. § 355 (amended). Limitation on new action following reversal on appeal**

355. If an action is commenced within the time prescribed therefor, and a judgment therein for the plaintiff be reversed on appeal, the plaintiff, or if he die and the cause of action survive, his representatives, may commence *other than on the merits*, a new action *may be commenced* within one year after the reversal.

**Comment.** Section 355 is amended for conformity with the revised rules concerning litigation after death of a party. See Sections 377.10-377.62. This section is also revised to make clear that it does not apply where the judgment was reversed on the merits. See, e.g., *Watterson v. Owens River Canal Co.*, 190 Cal. 88, 93, 210 P. 625 (1922); *Schneider v. Schimmels*, 256 Cal. App. 2d 366, 370, 64 Cal. Rptr. 273 (1967).

**Code Civ. Proc. §§ 366.1-366.2 (added). Time of commencement of action after person's death**

**CHAPTER 6. TIME OF COMMENCEMENT OF ACTION  
AFTER PERSON'S DEATH**

**§ 366.1. Limitations period after death of person entitled to bring action**

366.1. If a person entitled to bring an action dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced before the expiration of the later of the following times:

(a) Six months after the person's death.

(b) The limitations period that would have been applicable if the person had not died.

**Comment.** Section 366.1 restates part of former Section 353(a) without substantive change. This section makes clear that the decedent's death does not shorten the limitations period applicable to the decedent's cause of action, but may extend it for up to six months. As to survival of causes of action, see Section 377.20. For persons entitled to bring the action, see Section 377.30 (commencement of action decedent could have brought). See also Section 355 (one-year limitations period after reversal).

**§ 366.2. Limitations period after death of person against whom action may be brought**

366.2. (a) Subject to Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims, if a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

(b) Subject to Chapter 8 (commencing with Section 9350) of Part 4 of Division 7 of the Probate Code, the limitations

period provided in this section for commencement of an action is not tolled or extended for any reason.

(c) This section applies a person against whom an action may be brought who died on or after January 1, 1993.

**Comment.** Section 366.2 restates former Section 353(b) without substantive change. This section applies a one-year statute of limitations on all actions against a decedent on which the statute of limitations otherwise applicable has not run at the time of death. This one-year limitations period applies regardless of whether the statute otherwise applicable would have expired before or after the one-year period.

If a general personal representative is appointed during the one-year period, the personal representative must notify known creditors, and the filing of a claim tolls the statute of limitations. See Prob. Code §§ 9050 (notice required), 9352 (tolling of statute of limitations). If the creditor is concerned that the decedent's beneficiaries may not have a general personal representative appointed during the one-year period, the creditor may petition for appointment during that time. See Prob. Code §§ 8000 (petition), 8461 (priority for appointment); see also Prob. Code § 48 ("interested person" defined).

The reference to the decedent's "representatives" was deleted from former Section 353(b). This section is concerned only with the time within which an action on a liability of the decedent may be brought, not with the proper parties in such a case. See Section 377.40 (assertion of cause of action against decedent). The one-year limitation of Section 366.2 applies in any action on a liability of the decedent, whether against a personal representative under Probate Code Sections 9350-9354 or against another person, such as a distributee under Probate Code Section 9392, a person who takes the decedent's property and is liable for the decedent's debts under Probate Code Sections 13109 (affidavit procedure for collection or transfer of personal property), 13156 (court order determining succession to real property), 13204 (affidavit procedure for real property of small value), or 13554 (passage of property to surviving spouse without administration), or a trustee. For cases where an action may be brought against the estate of the decedent, rather than the personal representative, see Section 377.50 and Probate Code Sections 550-555 (insured claims). See also Prob. Code § 58 ("personal representative" defined). As to survival of causes of action, see Section 377.20.

Subdivision (c) makes clear that this section does not apply to persons who died before January 1, 1993. The rules applicable to cases involving decedents who died before January 1, 1993, are set forth in former Section 353. The repeal of former Section 353 does not have any effect

on the application of subdivisions (c) and (d) of former Section 353 in the cases to which they applied.

**Code Civ. Proc. § 367 (chapter heading)**

CHAPTER 1. GENERAL PROVISIONS

**Code Civ. Proc. § 367 (amended). Real party in interest**

367. Every action must be prosecuted in the name of the real party in interest, except as *otherwise* provided in ~~Sections 369 and 374 of this code~~ *by statute*.

**Comment.** Section 367 is amended to eliminate the obsolete listing of statutes that permit prosecution of an action in the name of a person other than the real party in interest. Statutes that permit prosecution in the name of a person other than the real party in interest include Civil Code Section 1363 (association to manage common interest development), Code of Civil Procedure Section 369 (fiduciaries), and Probate Code Sections 550-555 (insured claims).

**Code Civ. Proc. § 368.5 (added). Transfer of interest in pending action**

368.5. An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

**Comment.** Section 368.5 restates part of former Section 385 without substantive change.

**Code Civ. Proc. § 369 (amended). Fiduciaries**

369. (a) ~~An executor or administrator, or trustee of an express trust, or a person expressly authorized by statute, The following persons~~ may sue without joining with him or her as parties the persons for whose benefit the action is prosecuted:

- (1) *A personal representative.*
- (2) *A trustee of an express trust.*

(3) Except for a person upon whom a power of sale has been conferred pursuant to a deed of trust or mortgage, a person with whom, or in whose name, a contract is made for the benefit of another, ~~is a trustee of an express trust, within the meaning of this section.~~

(4) *Any other person expressly authorized by statute.*

(b) Notwithstanding subdivision (a), a trustee upon whom a power of sale has been conferred pursuant to a deed of trust or mortgage may sue to exercise the trustee's powers and duties pursuant to Chapter 2 (commencing with Section 2920) of Title 14 of Part 4 of Division 3 of the Civil Code.

**Comment.** Subdivision (a) of Section 369 is reorganized and the terminology clarified. These changes are technical and not substantive. See also Prob. Code §§ 58 (“personal representative” defined), 82 (“trust” defined), 84 (“trustee” defined).

**Code Civ. Proc. § 369.5 (added). Partnership or association**

369.5. (a) A partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known.

(b) A member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on the member as an individual, whether or not the member is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against the member based on the member's personal liability may be obtained in the action, whether the liability is joint, joint and several, or several.

**Comment.** Section 369.5 restates former Section 388 without substantive change.

**Code Civ. Proc. § 370 (chapter heading)**

## CHAPTER 2. MARRIED PERSON

**Code Civ. Proc. § 372 (chapter heading)**

## CHAPTER 3. DISABILITY OF PARTY

**Code Civ. Proc. § 374 (repealed). Association to manage common interest development**

~~374. An association established to manage a common interest development shall have standing to institute, defend, settle, or intervene in litigation, arbitration, mediation, or administrative proceedings in its own name as the real party in interest and without joining with it the individual owners of the common interest development, in matters pertaining to the following:~~

~~(a) Enforcement of the governing documents.~~

~~(b) Damage to the common areas.~~

~~(c) Damage to the separate interests which the association is obligated to maintain or repair.~~

~~(d) Damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.~~

**Comment.** Former Section 374 is restated in Civil Code Section 1363 (association to manage common interest development) without substantive change.

**Code Civ. Proc. § 375 (added). Effect of disability on pending action**

375. An action or proceeding does not abate by the disability of a party. The court, on motion, shall allow the action or proceeding to be continued by or against the party's representative.

**Comment.** Section 375 restates part of former Section 385, but makes clear that substitution of the representative of a disabled person is mandatory rather than permissive.

**Code Civ. Proc. § 376 (technical amendment). Injury to minor**

376. (a) The parents of a legitimate unmarried minor child, acting jointly, may maintain an action for injury to ~~such~~ *the* child caused by the wrongful act or neglect of another. If either parent ~~shall fail~~ *fails* on demand to join as plaintiff in ~~such~~ *the* action or is dead or cannot be found, then the other parent may maintain ~~such~~ *the* action ~~and~~ *the*. *The* parent, if living, who does not join as plaintiff ~~must~~ *shall* be joined as a defendant and, before trial or hearing of any question of fact, ~~must~~ *shall* be served with summons either in the manner provided by law for the service of a summons in a civil action or by sending a copy of the summons and complaint by registered mail with proper postage prepaid addressed to ~~such~~ *that* parent's last known address with request for a return receipt. If service is made by registered mail, the production of a return receipt purporting to be signed by the addressee creates a rebuttable presumption that ~~such~~ *the* summons and complaint have been duly served. The presumption established by this section is a presumption affecting the burden of producing evidence. The respective rights of the parents to any award shall be determined by the court.

(b) A parent may maintain an action for such an injury to his or her illegitimate unmarried minor child if a guardian has not been appointed. Where ~~such~~ *a* parent who does not have care, custody, or control of the child brings the action, the parent who has care, custody, or control of the child shall be served with the summons either in the manner provided by law for the serving of a summons in a civil action or by sending a copy of the summons and complaint by registered mail, with proper postage prepaid, addressed to the last known address of ~~such~~ *that* parent, with request for a return

receipt. If service is made by registered mail, the production of a return receipt purporting to be signed by the addressee creates a rebuttable presumption that the summons and complaint have been duly served. The presumption established by this section is a presumption affecting the burden of producing evidence. The respective rights of the parents to any award shall be determined by the court.

(c) The father of an illegitimate child who maintains an action under this section shall have acknowledged in writing prior to the child's injury, in the presence of a competent witness, that he is the father of the child, or, prior to the child's injury, have been judicially determined to be the father of the child.

(d) A parent of an illegitimate child who does not maintain an action under this section may be joined as a party thereto.

(e) A guardian may maintain an action for such an injury to his or her ward.

~~Any such~~

(f) *An action under this section may be maintained against the person causing the injury. If any other person is responsible for ~~any such~~ the wrongful act or neglect, the action may also be maintained against ~~such~~ the other person. The death of the child or ward shall does not abate the parents' or guardian's cause of action for his or her the child's injury as to damages accruing before his or her the child's death.*

(g) *In every an action under this section, ~~such~~ damages may be ~~given as awarded that~~, under all of the circumstances of the case, may be just; except that ~~in any~~:*

(1) *In an action maintained after the death of the child or ward or against the executor or administrator of, the damages recoverable are as provided in Section 377.34.*

(2) *Where the person causing the injury is deceased, the damages recoverable shall be in an action against the*

*decedent's personal representative are as provided in Section 573 of the Probate Code 377.42.*

*(h) If an action arising out of the same wrongful act or neglect may be maintained pursuant to Section 377 377.60 for wrongful death of any such a child described in this section, the action authorized by this section shall may be consolidated therewith for trial on motion of any interested party as provided in Section 1048.*

**Comment.** Section 376 is revised to correct cross-references, to add subdivision letters to the existing paragraphs, and to improve the wording. The word "ward" in subdivision (g)(1) has been omitted as surplus; this is a technical, nonsubstantive change.

Subdivision (h) is revised for consistency with Section 377.62.

### **Code Civ. Proc. § 377 (repealed). Wrongful death**

~~377. (a) When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer, against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this section, such damages may be given as under all the circumstances of the case, may be just, but shall not include damages recoverable under Section 573 of the Probate Code. The respective rights of the heirs in any award shall be determined by the court. Any action brought by personal representatives of the decedent pursuant to the provisions of Section 573 of the Probate Code may be joined with an action arising out of the same wrongful act or neglect brought pursuant to the provisions of this section. If an action be brought pursuant to~~

~~the provisions of this section and a separate action arising out of the same wrongful act or neglect be brought pursuant to the provisions of Section 573 of the Probate Code, such actions shall be consolidated for trial on the motion of any interested party.~~

~~(b) For the purposes of subdivision (a), “heirs” means only the following:~~

~~(1) Those persons who would be entitled to succeed to the property of the decedent according to the provisions of Part 2 (commencing with Section 6400) of Division 6 of the Probate Code,~~

~~(2) Whether or not qualified under paragraph (1), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, and parents. As used in this paragraph, “putative spouse” means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid, and~~

~~(3) Minors, whether or not qualified under paragraphs (1) or (2), if, at the time of the decedent’s death, they resided for the previous 180 days in the decedent’s household and were dependent upon the decedent for one half or more of their support.~~

~~Nothing in this subdivision shall be construed to change or modify the definition of “heirs” under any other provisions of law.~~

**Comment.** The first part of the first sentence of subdivision (a) and subdivision (b) of former Section 377 are restated in Section 377.60 (parties in wrongful death action). See Section 377.60 Comment. The last part of the first sentence of subdivision (a) is superseded by Sections 377.20 (survival of cause of action) and 377.40 (assertion of cause of action against decedent). The second sentence of subdivision (a) is superseded by Sections 377.60 (parties in wrongful death action), 377.20 (survival of cause of action), and 377.40 (assertion of cause of action against decedent). The third and fourth sentences of subdivision (a) are restated in Section 377.61 (damages in wrongful death action) without

substantive change. The fifth sentence of subdivision (a) is restated and generalized in Section 377.62(a) (joinder of causes of action). The last sentence of subdivision (a) is superseded by Section 377.62(b) (consolidation of actions). See Comment to Section 377.62(b).

**Code Civ. Proc. §§ 377.10-377.62 (added). Effect of death**

CHAPTER 4. EFFECT OF DEATH

Article 1. Definitions

**§ 377.10. Beneficiary of decedent's estate**

377.10. For the purposes of this chapter, “beneficiary of the decedent’s estate” means:

(a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeed to a cause of action, or to a particular item of property that is the subject of a cause of action, under the decedent’s will.

(b) If the decedent died without leaving a will, the sole person or all of the persons who succeed to a cause of action, or to a particular item of property that is the subject of a cause of action, under Sections 6401 and 6402 of the Probate Code or, if the law of a sister state or foreign nation governs succession to the cause of action or particular item of property, under the law of the sister state or foreign nation.

**Comment.** Section 377.10 is a new provision drawn from Probate Code Section 13006. See also Section 377.11 (“decedent’s successor in interest” defined).

**§ 377.11. Decedent’s successor in interest**

377.11. For the purposes of this chapter, “decedent’s successor in interest” means the beneficiary of the decedent’s estate or other successor in interest who succeeds to a cause of action or to a particular item of the property that is the subject of a cause of action.

**Comment.** Section 377.11 is new. The term “successor in interest” is derived from the second sentence of former Section 385. “Beneficiary of the decedent’s estate” is defined Section 377.10, and refers to takers of assets that are or would be subject to probate. Other successors in interest include persons who take property at the decedent’s death by operation of law or a contract or account agreement.

The decedent’s successor in interest does not include a person to whom the cause of action or property was assigned during the decedent’s lifetime.

## Article 2. Survival and Continuation

### § 377.20. Survival of cause of action

377.20. (a) Except as otherwise provided by statute, a cause of action for or against a person is not lost by reason of the person’s death, but survives subject to the applicable limitations period.

(b) This section applies even though a loss or damage occurs simultaneously with or after the death of a person who would have been liable if the person’s death had not preceded or occurred simultaneously with the loss or damage.

**Comment.** Subdivision (a) of Section 377.20 restates the first part of former Probate Code Section 573(a) without substantive change. Subdivision (b) restates former Probate Code Section 573(d) without substantive change. The applicable limitations period may be affected by the death of a person. See Sections 366.1-366.2 (time of commencement of action after death of person).

### § 377.21. Continuation of pending action

377.21. A pending action or proceeding does not abate by the death of a party if the cause of action survives.

**Comment.** Section 377.21 restates part of the first sentence of former Section 385 without substantive change.

### § 377.22. Assignability of causes of action

377.22. Nothing in this chapter shall be construed as affecting the assignability of causes of action.

**Comment.** Section 377.22 restates former Probate Code Section 573(e) without substantive change.

### Article 3. Decedent's Cause of Action

#### § 377.30. Commencement of action decedent could have commenced

377.30. A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest.

**Comment.** Section 377.30 restates the first part of former Code of Civil Procedure Section 353(a) and part of former Probate Code Section 573(a) without substantive change, but adds the reference to the successor in interest drawn from former Code of Civil Procedure Section 385. Under this section, an action or proceeding may be commenced by the decedent's successor in interest only if there is no personal representative. The distributee of the cause of action in probate is the successor in interest or, if there is no distribution, the heir, devisee, trustee, or other successor has the right to proceed under this article. See Section 377.11 ("decedent's successor in interest" defined). See also Prob. Code § 58 ("personal representative" defined). The addition of the reference to the successor in interest makes the rules applicable to commencement of an action consistent with the rules applicable to continuation of a pending action. Thus, the distinction between commencing and continuing the decedent's action drawn in *Everett v. Commissioner*, T.C.M. (P-H) ¶ 89,124 (Mar. 27, 1989), is not applicable under Sections 377.30 and 377.31.

#### § 377.31. Continuation of pending action commenced by decedent

377.31. On motion after the death of a person who commenced an action or proceeding, the court shall allow a pending action or proceeding that does not abate to be continued by the decedent's personal representative or, if none, by the decedent's successor in interest.

**Comment.** Section 377.31 restates part of former Section 385, but recognizes that the personal representative or successor in interest has an absolute right to be substituted for the decedent; substitution in this situation is not discretionary with the court. See, e.g., *Pepper v. Superior Court*, 76 Cal. App. 3d 252, 260-61, 142 Cal. Rptr. 759 (1977). See also Section 377.11 (“decedent’s successor in interest” defined); Prob. Code § 58 (“personal representative” defined).

This section is consistent with the application of former Section 385 in a federal Tax Court. See *Everett v. Commissioner*, T.C.M. (P-H) ¶ 89,124 (Mar. 27, 1989) (daughter of decedent petitioner substituted as party under federal rules adopting local law as to proper parties).

### **§ 377.32. Affidavit or declaration by decedent’s successor in interest**

377.32. (a) The person who seeks to commence an action or proceeding or to continue a pending action or proceeding as the decedent’s successor in interest under this article, shall execute and file an affidavit or a declaration under penalty of perjury under the laws of this state stating all of the following:

(1) The decedent’s name.

(2) The date and place of the decedent’s death.

(3) “No proceeding is now pending in California for administration of the decedent’s estate.”

(4) If the decedent’s estate was administered, a copy of the final order showing the distribution of the decedent’s cause of action to the successor in interest.

(5) Either of the following, as appropriate, with facts in support thereof:

(A) “The affiant or declarant is the decedent’s successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) and succeeds to the decedent’s interest in the action or proceeding.”

(B) “The affiant or declarant is authorized to act on behalf of the decedent’s successor in interest (as defined in Section 377.11 of the California Code of Civil Procedure) with respect to the decedent’s interest in the action or proceeding.”

(6) “No other person has a superior right to commence the action or proceeding or to be substituted for the decedent in the pending action or proceeding.”

(7) “The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) A certified copy of the decedent’s death certificate shall be attached to the affidavit or declaration.

**Comment.** Section 337.330 is new. The affidavit provided in this section is drawn from the affidavit provided in Probate Code Section 13101.

### **§ 377.33. Order concerning parties**

377.33. The court in which an action is commenced or continued under this article may make any order concerning parties that is appropriate to ensure proper administration of justice in the case, including appointment of the decedent’s successor in interest as a special administrator or guardian ad litem.

**Comment.** Section 377.33 is new. The court in which the action or proceeding is pending has authority to resolve questions concerning the proper parties to the litigation and to make conclusive and binding orders, including determinations of the right of a successor in interest to commence or continue an action or proceeding. The references to appointment of the successor in interest as a special administrator or guardian ad litem are intended to recognize that there may be a need to impose fiduciary duties on the successor to protect the interests of other potential beneficiaries. See Code Civ. Proc. §§ 372-373.5 (guardian ad litem); Prob. Code §§ 8540-8547 (special administrator).

**§ 377.34. Damages recoverable by decedent's personal representative or successor in interest**

377.34. In an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, the damages recoverable are limited to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.

**Comment.** Section 377.34 restates former Probate Code Section 573(c) without substantive change, and adds the reference to the successor in interest. See Section 377.11 ("decedent's successor in interest" defined); Prob. Code § 58 ("personal representative" defined). The limitations in this section apply to the decedent's cause of action and not to a cause of action that others may have for the wrongful death of the decedent. See Sections 377.60-377.62 (wrongful death).

**§ 377.35. Application of article**

377.35. On and after January 1, 1993, this article applies to the commencement of an action or proceeding the decedent was entitled to commence, and to the continuation of an action or proceeding commenced by the decedent, regardless of whether the decedent died before, on, or after January 1, 1993.

**Comment.** Section 377.35 makes clear that, as of the operative date, the procedures provided by this article apply regardless of the date of the decedent's death. Thus, for example, if the limitations period provided in Section 366.1 has not run, a successor in interest of a decedent who died before January 1, 1993, may proceed under this article, assuming that a personal representative has not been appointed. See, e.g., Section 377.30 (commencement of action by personal representative or, if none, by successor in interest). However, if the limitations period under Section 366.1 has run before January 1, 1993, this article cannot be applied to revive the cause of action. Similarly, an action commenced by a decedent who died before January 1, 1993, may be continued by a successor in interest or personal representative as provided in this article.

## Article 4. Cause of Action Against Decedent

### § 377.40. Assertion of cause of action against decedent

377.40. Subject to Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims, a cause of action against a decedent that survives may be asserted against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest.

**Comment.** Section 377.40 restates a portion of the first sentence of former Code of Civil Procedure Section 353(b) and part of former Probate Code Section 573(a) without substantive change. For special rules providing direct liability of successors in interest, see, e.g., Prob. Code §§ 13109 (transferee of property by affidavit), 13550 (surviving spouse who takes property without administration).

The introductory portion of Section 377.40, referring to Part 4 (creditor claims) of Division 7 of the Probate Code, is intended for cross-referencing purposes. See Prob. Code §§ 9350-9399 (claims in litigation). For special rules governing liability covered by insurance, see Code Civ. Proc. § 377.50; Prob. Code §§ 550-555.

See also Code Civ. Proc. § 377.11 ("decedent's successor in interest" defined); Prob. Code § 58 ("personal representative" defined).

### § 377.41. Continuation of pending action against decedent

377.41. On motion, the court shall allow a pending action or proceeding against the decedent that does not abate to be continued against the decedent's personal representative or, to the extent provided by statute, against the decedent's successor in interest, except that the court may not permit an action or proceeding to be continued against the personal representative unless proof of compliance with Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor claims is first made.

**Comment.** Section 377.41 supersedes part of former Section 385. An action or proceeding may be continued against the decedent's successor in interest only if a statute provides for liability in such cases. For special rules providing direct liability of successors in interest, see, e.g., Prob. Code §§ 13109 (transferee of property by affidavit), 13550 (surviving

spouse who takes property without administration), 18201 (trust assets). See also Section 377.11 (“decedent’s successor in interest” defined); Prob. Code § 58 (“personal representative” defined); Veh. Code § 17452 (continuation of action against personal representative of nonresident defendant involved in motor vehicle accident).

### **§ 377.42. Damages recoverable**

377.42. In an action or proceeding against a decedent’s personal representative or, to the extent provided by statute, against the decedent’s successor in interest, on a cause of action against the decedent, all damages are recoverable that might have been recovered against the decedent had the decedent lived except damages recoverable under Section 3294 of the Civil Code or other punitive or exemplary damages.

**Comment.** Section 377.42 restates former Probate Code Section 573(b) without substantive change, and applies the rule to successors in interest, to the extent they are liable. See Comments to Sections 377.40 & 377.41. See also Code Civ. Proc. § 377.11 (“decedent’s successor in interest” defined); Prob. Code § 58 (“personal representative” defined).

### **§ 377.43. Application of article**

377.43. This article applies to the commencement on or after January 1, 1993, of an action or proceeding against the decedent’s personal representative or successor in interest, or to the making of a motion on or after January 1, 1993, to continue a pending action or proceeding against the decedent’s personal representative or successor in interest, regardless of whether the decedent died before, on, or after January 1, 1993.

**Comment.** Section 377.43 makes clear that, as of the operative date, the procedures provided by this article apply to commencing an action, or making a motion to continue an action, against a personal representative or successor in interest regardless of the date of the decedent’s death. Thus, for example, if a motion to substitute a successor in interest as a defendant has been made before January 1, 1993, this article would not apply to the case. A motion made after January 1, 1993, would be

governed by this article even though the decedent died before that date. See, e.g., Section 377.41 (continuation of pending action against personal representative or successor in interest).

## Article 5. Insured Claims

### § 377.50. Action on insured claim

377.50. An action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued against the decedent's estate as provided in Chapter 1 (commencing with Section 550) of Part 13 of Division 2 of the Probate Code.

**Comment.** Section 377.50 is a new provision that provides a cross-reference to the special provisions in the Probate Code concerning insured claims against the decedent.

## Article 6. Wrongful Death

### § 377.60. Parties in wrongful death action

377.60. A cause of action for the death of a person caused by the wrongful act or neglect of another may be asserted by any of the following persons or by the decedent's personal representative on their behalf:

(a) The decedent's surviving spouse, children, and issue of deceased children, or, if none, the persons who would be entitled to the property of the decedent by intestate succession.

(b) Whether or not qualified under subdivision (a), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, or parents. As used in this subdivision, "putative spouse" means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid.

(c) A minor, whether or not qualified under subdivision (a) or (b), if, at the time of the decedent's death, the minor resided for the previous 180 days in the decedent's household and was dependent on the decedent for one-half or more of the minor's support.

**Comment.** Section 377.60 restates subdivision (b) and the first part of the first sentence of subdivision (a) of former Section 377 without substantive change, except as discussed below. If the wrongdoer dies before or after the decedent, the cause of action provided in this section may be asserted against the personal representative of the wrongdoer. See Sections 377.20 (survival of cause of action), 377.40 (assertion of cause of action against decedent). See also Prob. Code § 6400 *et seq.* (intestate succession). Unlike other provisions of this chapter that relate to causes of action belonging to the decedent, this article relates to a cause of action for the decedent's wrongful death, which belongs not to the decedent, but to the persons specified in this section. Thus, the cause of action is not property in the estate of the decedent, and the authority of the personal representative to assert the cause of action is for administrative convenience only and is not for the benefit of creditors or other persons interested in the decedent's estate.

Subdivision (a) revises the language of former Section 377(b)(1) to refer specifically to the decedent's surviving spouse, children, and issue of deceased children, as proper parties plaintiff in a wrongful death action. This makes clear that, even if the decedent's estate is entirely community property, the decedent's children and issue of deceased children are proper parties plaintiff, along with the decedent's surviving spouse. This codifies *Fiske v. Wilkie*, 67 Cal. App. 2d 440, 444, 154 P.2d 725 (1945). Under Probate Code Section 258, Section 377.60 is subject to the rules relating to the effect of homicide. This changes the rule of *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991).

For background, see *Standing To Sue for Wrongful Death*, 22 Cal. L. Revision Comm'n Reports 955 (1992).

### **§ 377.61. Damages in wrongful death action**

377.61. In an action under this article, damages may be awarded that, under all the circumstances of the case, may be just, but may not include damages recoverable under Section 377.34. The court shall determine the respective rights in an award of the persons entitled to assert the cause of action.

**Comment.** Section 377.61 restates the third and fourth sentences of former Section 377(a) without substantive change.

### **§ 377.62. Joinder and consolidation of actions**

377.62. (a) An action under Section 377.30 may be joined with an action under Section 377.60 arising out of the same wrongful act or neglect.

(b) An action under Section 377.60 and an action under Section 377.31 arising out of the same wrongful act or neglect may be consolidated for trial as provided in Section 1048.

**Comment.** Subdivision (a) of Section 377.62 restates and generalizes the fifth sentence of former Section 377(a).

Subdivision (b) replaces the last sentence of former Section 377(a). This subdivision incorporates the general provision governing consolidation of actions which recognizes the court's discretion to order consolidation. Former Section 377(a) provided that the court "shall" order consolidation on motion of an interested party.

## **Code Civ. Proc. § 378 (chapter heading)**

### CHAPTER 5. PERMISSIVE JOINDER

#### **Code Civ. Proc. § 385 (repealed). Disability or death**

~~385. An action or proceeding does not abate by the death, or any disability of a party, or by the transfer of any interest therein, if the cause of action survives or continues. In case of the death or any disability of a party, the court, on motion, may allow the action or proceeding to be continued by or against his or her representative or successor in interest. In case of any other transfer of interest, the action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.~~

**Comment.** Section 385 is restated in Sections 368.5 (transfer of interest in pending action), 375 (effect of disability on pending action), 377.21 (continuation of pending action), 377.31 (continuation of pending action commenced by decedent), and 377.41 (continuation of pending

action against decedent) without substantive change, except that Section 375 provides that substitution of parties is mandatory rather than permissive.

**Code Civ. Proc. § 386 (chapter heading)**

CHAPTER 6. INTERPLEADER

**Code Civ. Proc. § 387 (chapter heading)**

CHAPTER 7. INTERVENTION

**Code Civ. Proc. § 388 (repealed). Partnership or association**

~~388. (a) Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.~~

~~(b) Any member of the partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on such member as an individual, whether or not he is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against him based on his personal liability may be obtained in the action, whether such liability be joint, joint and several, or several.~~

**Comment.** Former Section 388 is restated in Section 369.5 without substantive change.

**Code Civ. Proc. § 388 (added). Copy of environmental litigation to Attorney General**

388. In an action brought by a party for relief of any nature other than solely for money damages where a pleading alleges facts or issues concerning alleged pollution or adverse environmental effects which could affect the public generally, the party filing the pleading shall furnish a copy to the Attorney General of the State of California. The copy shall be

furnished by the party filing the pleading within 10 days after filing.

**Comment.** Section 388 restates former Section 389.6 without substantive change.

**Code Civ. Proc. § 389 (chapter heading)**

CHAPTER 8. COMPULSORY JOINDER

**Code Civ. Proc. § 389.6 (repealed). Copy of litigation to Attorney General**

~~389.6. In any action brought by any party for relief of any nature other than solely for money damages where a pleading alleges facts or issues concerning alleged pollution or adverse environmental effects which could affect the public generally, the party filing the pleading shall furnish a copy to the Attorney General of the State of California. Such copy shall be furnished by the party filing the pleading within 10 days after filing.~~

**Comment.** Former Section 389.6 is restated in Section 388 without substantive change.

**Code Civ. Proc. § 390 (repealed). Action against board of fire commissioners**

~~390. Causes of action upon contract, or for damages arising out of, or pertaining or incident to the official administration of the fire departments created by acts of the legislature of this state, shall be brought directly by and against the municipality by its corporate name wherein the damage was sustained. And the said boards of fire commissioners shall not be sued as such, except to compel or restrain the performance of acts proper to be compelled or restrained under and not within the discretion intended to be conferred by this act.~~

**Comment.** Former Section 390 is omitted. This section, enacted in 1885, had become obsolete and was superseded by general provisions governing lawsuits by and against local public entities. See, e.g., Gov't

Code §§ 810-996.6 (claims and actions against public entities and public employees).

**Prob. Code § 258 (added). Action for wrongful death**

258. A person who feloniously and intentionally kills the decedent is not entitled to bring an action for wrongful death of the decedent or to benefit from the action brought by the decedent's personal representative. The persons who may bring an action for wrongful death of the decedent and to benefit from the action are determined as if the killer had predeceased the decedent.

**Comment.** Section 258 is a new section that changes the rule of *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991). See also Code Civ. Proc. § 377.60 (persons who may sue for wrongful death).

**Prob. Code § 551 (technical amendment). Statute of limitations**

551. Notwithstanding Section 353 366.2 of the Code of Civil Procedure, if the limitations period otherwise applicable to the action has not expired at the time of the decedent's death, an action under this chapter may be commenced within one year after the expiration of the limitations period otherwise applicable.

**Comment.** Section 551 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 573 (repealed). Survival of actions; continuation against personal representative**

**Comment.** Subdivision (a) of former Section 573 is restated without substantive change in Code of Civil Procedure Sections 377.20(a) (survival of cause of action), 377.30 (commencement of action decedent could have brought), and 377.40 (assertion of cause of action against decedent).

Subdivision (b) is restated and generalized in Code of Civil Procedure Section 377.42 (damages recoverable in action against decedent's personal representative).

Subdivision (c) is restated and generalized in Code of Civil Procedure Section 337.350 (damages recoverable in action by decedent's personal representative or successor in interest).

Subdivision (d) is restated in Code of Civil Procedure 377.20(b) (survival of cause of action) without substantive change.

Subdivision (e) is restated in Code of Civil Procedure Section 377.22 (assignability of causes of action) without substantive change.

Subdivision (f) is omitted as unnecessary, since Section 13107.5 specifically incorporates the procedure that supersedes former Section 573. See Code Civ. Proc. §§ 377.30-377.35.

**Prob. Code § 6611 (technical amendment). Liability for decedent's unsecured debts**

6611. (a) Subject to the limitations and conditions specified in this section, the person or persons in whom title vested pursuant to Section 6609 are personally liable for the unsecured debts of the decedent.

(b) The personal liability of a person under this section does not exceed the fair market value at the date of the decedent's death of the property title to which vested in that person pursuant to Section 6609, less the total of all of the following:

(1) The amount of any liens and encumbrances on that property.

(2) The value of any probate homestead interest set apart under Section 6520 out of that property.

(3) The value of any other property set aside under Section 6510 out of that property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the surviving spouse of the decedent, the child or children of the decedent, or the guardian of the minor child or children of the decedent, may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) If proceedings are commenced in this state for the administration of the estate of the decedent and the time for filing claims has commenced, any action upon the personal liability of a person under this section is barred to the same extent as provided for claims under Part 4 (commencing with Section 9000) of Division 7, except as to the following:

(1) Creditors who commence judicial proceedings for the enforcement of the debt and serve the person liable under this section with the complaint therein prior to the expiration of the time for filing claims.

(2) Creditors who have or who secure an acknowledgment in writing of the person liable under this section that that person is liable for the debts.

(3) Creditors who file a timely claim in the proceedings for the administration of the estate of the decedent.

(e) Section 353 366.2 of the Code of Civil Procedure applies in an action under this section.

**Comment.** Section 6611 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 7664 (technical amendment). Liability for decedent's unsecured debts**

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed to the person, valued as of the date of the distribution, less the amount of any liens and encumbrances on the property on that date. Section 353 366.2 of the Code of Civil Procedure applies in an action under this section.

**Comment.** Section 7664 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 9103 (technical amendment). Late claims**

9103. (a) Upon petition by a creditor and notice of hearing given as provided in Section 1220, the court may allow a

claim to be filed after expiration of the time for filing a claim if the creditor establishes that either of the following conditions is satisfied:

(1) Neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the estate more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had actual knowledge of the administration whichever occurred first.

(2) Neither the creditor nor the attorney representing the creditor in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 9100, and the creditor's petition was filed within 30 days after either the creditor or the creditor's attorney had knowledge of the existence of the claim whichever occurred first.

(b) The court shall not allow a claim to be filed under this section after the earlier of the following times:

(1) The time the court makes an order for final distribution of the estate.

(2) One year after the time letters are first issued to a general personal representative. Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 353 366.2 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable, and may require the appointment or reappointment of a personal representative if necessary. The court may deny the creditor's petition if a payment to general creditors has been made and it appears that the filing or establishment of the claim would cause or tend to cause unequal treatment among creditors.

(d) Regardless of whether the claim is later established in whole or in part, payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Section 9392 and subject to Section 9053, the personal representative or payee is not liable on account of the prior payment. Nothing in this subdivision limits the liability of a person who receives a preliminary distribution of property to restore to the estate an amount sufficient for payment of the distributee's proper share of the claim, not exceeding the amount distributed.

**Comment.** Section 9103 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 9391 (technical amendment). Enforcement of security interest**

9391. The holder of a mortgage or other lien on property in the decedent's estate, including, but not limited to, a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate. Section 353 366.2 of the Code of Civil Procedure does not apply to an action under this section.

**Comment.** Section 9391 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 9392 (technical amendment). Liability of distributee**

9392. (a) Subject to subdivision (b), a person to whom property is distributed is personally liable for the claim of a creditor, without a claim first having been filed, if all of the following conditions are satisfied:

(1) The identity of the creditor was known to, or reasonably ascertainable by, a general personal representative within four months after the date letters were first issued to the personal

representative, and the claim of the creditor was not merely conjectural.

(2) Notice of administration of the estate was not given to the creditor under Chapter 2 (commencing with Section 9050) and neither the creditor nor the attorney representing the creditor in the matter has actual knowledge of the administration of the estate before the time the court made an order for final distribution of the property.

(3) The statute of limitations applicable to the claim under Section 353 366.2 of the Code of Civil Procedure has not expired at the time of commencement of an action under this section.

(b) Personal liability under this section is applicable only to the extent the claim of the creditor cannot be satisfied out of the estate of the decedent and is limited to a pro rata portion of the claim of the creditor, based on the proportion that the value of the property distributed to the person out of the estate bears to the total value of all property distributed to all persons out of the estate. Personal liability under this section for all claims of all creditors shall not exceed the value of the property distributed to the person out of the estate. As used in this section, the value of property is the fair market value of the property on the date of the order for distribution, less the amount of any liens and encumbrances on the property at that time.

(c) Nothing in this section affects the rights of a purchaser or encumbrancer of property in good faith and for value from a person who is personally liable under this section.

**Comment.** Section 9392 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 13107.5 (technical amendment). Substitution of parties without probate**

13107.5. Where the money or property claimed in an affidavit or declaration executed under this chapter is the

subject of a pending action or proceeding in which the decedent was a party, the successor of the decedent shall, without procuring letters of administration or awaiting probate of the will, be substituted as a party in place of the decedent by making a motion under ~~Section 385 Article 3 (commencing with Section 377.30) of Chapter 4 of Title 2 of Part 2~~ of the Code of Civil Procedure. The successor of the decedent shall file the affidavit or declaration with the court when the motion is made. For the purpose of ~~Section 385 Article 3 (commencing with Section 377.30) of Chapter 4 of Title 2 of Part 2~~ of the Code of Civil Procedure, a successor of the decedent who complies with this chapter shall be considered as a successor in interest of the decedent.

**Comment.** Section 13107.5 is amended to revise section references. This revision is a technical, nonsubstantive change. This section makes clear that the general procedure for substituting the decedent's successor in interest provided in the Code of Civil Procedure applies to disposition of small estates without probate under this part. For this purpose, a "successor of the decedent" as defined in Section 13006 is a "decedent's successor in interest" as defined in Code of Civil Procedure Section 377.11.

**Prob. Code § 13109 (technical amendment). Liability for decedent's unsecured debts**

13109. A person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable, to the extent provided in Section 13112, for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000)

of Division 7. Section ~~353~~ 366.2 of the Code of Civil Procedure applies in an action under this section.

**Comment.** Section 13109 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 13156 (technical amendment). Liability for decedent's unsecured debts**

13156. (a) Subject to subdivisions (b), (c), and (d), the petitioner who receives the decedent's property pursuant to an order under this chapter is personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the petitioner may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

(d) Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7.

(e) Section ~~353~~ 366.2 of the Code of Civil Procedure applies in an action under this section.

**Comment.** Section 13156 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 13204 (technical amendment). Liability for decedent's unsecured debts**

13204. Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is personally liable to the extent provided in Section 13207 for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same

manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 353 366.2 of the Code of Civil Procedure applies in an action under this section.

**Comment.** Section 13204 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 13554 (technical amendment). Enforcement of liability**

13554. (a) Except as otherwise provided in this chapter, any debt described in Section 13550 may be enforced against the surviving spouse in the same manner as it could have been enforced against the deceased spouse if the deceased spouse had not died.

(b) In any action or proceeding based upon the debt, the surviving spouse may assert any defense, cross-complaint, or setoff which would have been available to the deceased spouse if the deceased spouse had not died.

(c) Section 353 366.2 of the Code of Civil Procedure applies in an action under this section.

**Comment.** Section 13554 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 19103 (technical amendment). Late claims**

19103. (a) Upon petition by a claimant and upon giving notice of hearing in the manner and to the person set forth in Section 19024, the court may allow a claim to be filed after expiration of the time provided in Section 19100 if it appears that either of the following conditions are satisfied:

(1) Neither the claimant nor the attorney representing the claimant in the matter had actual knowledge of the proceeding under this part more than 15 days before

expiration of the time provided in Section 19100, and the claimant's petition was filed within 30 days after either the claimant or the claimant's attorney had actual knowledge of the proceeding whichever occurred first.

(2) Neither the claimant nor the attorney representing the claimant in the matter had knowledge of the existence of the claim more than 15 days before expiration of the time provided in Section 19100 and the claimant's petition was filed within 30 days after either the claimant or the claimant's attorney had knowledge of the existence of the claim whichever occurred first.

(b) The court shall not allow a claim to be filed under this section more than one year after the date of first publication of notice to creditors under Section 19040. Nothing in this subdivision authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 353 366.2 of the Code of Civil Procedure.

(c) The court may condition the claim on terms that are just and equitable. The court may deny the claimant's petition if a distribution to trust beneficiaries or payment to general creditors has been made and it appears the filing or establishment of the claim would cause or tend to cause unequal treatment among beneficiaries or creditors.

(d) Regardless of whether the claim is later established in whole or in part, property distributed under the terms of the trust subsequent to an order settling claims under Chapter 2 (commencing with Section 19020) and payments otherwise properly made before a claim is filed under this section are not subject to the claim. Except to the extent provided in Chapter 12 (commencing with Section 19400) and subject to Section 19053, the trustee, distributee, or payee is not liable on account of the prior distribution payment.

**Comment.** Section 19103 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 19104 (technical amendment). Amended claim**

19104. (a) Subject to subdivision (b), if a claim is filed within the time provided in this chapter, the claimant may later amend or revise the claim. The amendment or revision shall be filed in the same manner as the claim.

(b) An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired. An amendment or revision to specify the amount of a claim that, at the time of filing, was not due, was contingent, or was not yet ascertainable, is not an increase in the amount of the claim within the meaning of this subdivision. An amendment or revision of a claim may not be made for any purpose after the earlier of the following times:

(1) The time the court makes an order approving settlement of the claim against the deceased settlor under Chapter 2 (commencing with Section 19020).

(2) One year after the date of the first publication of notice to creditors under Section 19040. Nothing in this paragraph authorizes allowance or approval of a claim barred by, or extends the time provided in, Section 353 366.2 of the Code of Civil Procedure.

**Comment.** Section 19104 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 19400 (technical amendment). Liability of distributee**

19400. Subject to Section 353 366.2 of the Code of Civil Procedure, if there is no proceeding to administer the estate of the deceased settlor, and if the trustee does not file a proposed notice to creditors pursuant to Section 19003 and does not publish notice to creditors pursuant to Chapter 3 (*commencing with Section 19040*), then a beneficiary of the trust to whom payment, delivery, or transfer of the deceased settlor's property is made pursuant to the terms of the trust is personally liable, to the extent provided in Section 19402, for

the unsecured claims of the creditors of the deceased settlor's estate.

**Comment.** Section 19400 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 19401 (technical amendment). Liability of distributee**

19401. Subject to Section 19402, if the trustee filed a proposed notice to creditors pursuant to Section 19003 and published notice to creditors pursuant to Section 19040, and if the identity of the creditor was known to, or reasonably ascertainable by, the trustee within four months of the first publication of notice pursuant to Section 19040, then a person to whom property is distributed is personally liable for the claim of the creditor, without a claim first having been filed, if all of the following conditions are satisfied:

(a) The claim of the creditor was not merely conjectural.

(b) Notice to the creditor was not given to the creditor under Chapter 4 (commencing with Section 19050) and neither the creditor nor the attorney representing the creditor in the matter had actual knowledge of the administration of the trust estate sooner than one year after the date of first publication of notice pursuant to Section 19040.

(c) The statute of limitations applicable to the claim under Section 353 366.2 of the Code of Civil Procedure has not expired at the time of commencement of an action under this section.

**Comment.** Section 19401 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**Prob. Code § 19402 (technical amendment). Defenses, cross-complaints, setoffs**

19402. (a) In any action under this chapter, subject to Section 353 366.2 of the Code of Civil Procedure, the distributee may assert any defenses, cross-complaints, or

setoffs that would have been available to the deceased settlor if the settlor had not died.

(b) Personal liability under this chapter is applicable only to the extent the claim of the creditor cannot be satisfied out of the trust estate of the deceased settlor and is limited to a pro rata portion of the claim of the creditor, based on the proportion that the value of the property distributed to the person out of the trust estate bears to the total value of all property distributed to all persons out of the trust estate. Personal liability under this chapter for all claims of all creditors shall not exceed the value of the property distributed to the person out of the trust estate. As used in this chapter, the value of the property is the fair market value of the property on the date of its distribution, less the amount of any liens and encumbrances of the property at that time.

**Comment.** Section 19402 is amended to revise a section reference. This revision is a technical, nonsubstantive change.

**APPENDIX 5**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

TENTATIVE RECOMMENDATION

**Standing To Sue for Wrongful Death**

April 1992

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Standing To Sue for Wrongful Death*, 22 Cal. L. Revision Comm'n Reports 955 (1992).

STATE OF CALIFORNIA

PETE WILSON, Governor

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April 23, 1992

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This tentative recommendation proposes two changes in the law relating to standing to sue for wrongful death:

(1) It would codify case law that the decedent's issue may sue for the decedent's wrongful death, whether or not the decedent leaves a surviving spouse.

(2) It would overturn case law that a murdering heir is not disqualified from suing for the victim's wrongful death.

This study is authorized by Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 33 of the Statutes of 1991.

Respectfully submitted,

Edwin K. Marzec  
*Chairperson*



## STANDING TO SUE FOR WRONGFUL DEATH

If a person's death is caused by the wrongful act or neglect of another, a wrongful death action may be brought by the "persons who would be entitled to succeed to the property of the decedent" under the statutes of intestate succession.<sup>1</sup> Two questions have arisen in cases under this provision:

(1) Are the decedent's issue precluded from joining in the lawsuit if the decedent leaves a surviving spouse?<sup>2</sup>

(2) If the decedent is murdered by the person who, but for the murder, would inherit from the decedent, does the right to sue pass to the person next in line to inherit?<sup>3</sup>

### *Decedent's Issue as Proper Parties to Wrongful Death Action*

If an intestate decedent leaves both a surviving spouse and issue, and the estate is entirely community property, the entire estate will go to the surviving spouse under the statutes of intestate succession.<sup>4</sup> Because the surviving spouse will be the only heir in this case, the wrongful death statute arguably might limit the proper plaintiff to the decedent's surviving spouse, excluding the decedent's issue from joining in the action or sharing in the recovery.<sup>5</sup> But the

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1. Code Civ. Proc. § 377. Section 377 was repealed and reenacted as Sections 377.60-377.62 by 1992 Cal. Stat. ch. 178, §§ 19-20. See generally *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992). A wrongful death action may also be brought by the decedent's personal representative for the benefit of those who could sue in their own right. See Code Civ. Proc. § 377. In allowing the decedent's personal representative to sue, California law is consistent with the law in other states. The wrongful death statutes of other states are set out in 2 S. Speiser, *Recovery for Wrongful Death* 2d, Appendix A (1975 & 1990 Cum. Supp.).

2. See *Fiske v. Wilkie*, 67 Cal. App. 2d 440, 444, 154 P.2d 725 (1945).

3. See *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991).

4. Prob. Code § 6401.

5. To recover damages for wrongful death, the plaintiff must show both that the plaintiff is an heir eligible to take the decedent's property, and that the plaintiff has

statute has been broadly construed to permit suit by those who would be intestate takers regardless of the character of the decedent's property, i.e., both the surviving spouse and issue.<sup>6</sup>

The wrongful death statute would be clearer, and would conform to case law, if revised to codify this rule. The Commission recommends that suit be permitted by "decedent's surviving spouse, children, and issue of deceased children, or, if none, the persons who would be entitled to the property of the decedent by intestate succession."<sup>7</sup>

### *Effect of Homicide by Heir on Proper Parties to Wrongful Death Action*

In a recent case,<sup>8</sup> the paternal grandmother of an allegedly murdered infant sued the child's mother (ex-wife of her deceased son) for wrongful death of the child. Ordinarily, the mother would be the child's sole heir,<sup>9</sup> and thus the only proper plaintiff in an action for the child's wrongful death. The grandmother argued that Probate Code Section 250, disqualifying a killer from inheriting from the victim, disqualified the mother from inheriting from her murdered child, and that, as next in line to inherit from the child, the grandmother should be able to sue for the child's wrongful death. The court rejected the grandmother's argument and held she lacked standing to sue.

The court observed that the wrongful death statute permits suit by takers under "Part 2 (commencing with Section

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suffered actual pecuniary loss (usually loss of support from decedent). 6 B. Witkin, Summary of California Law *Torts* § 1197, at 632, § 1213, at 649 (9th ed. 1988).

6. *Fiske v. Wilkie*, 67 Cal. App. 2d 440, 444, 154 P.2d 725 (1945).

7. The Commission's recommendation would not change the rule that, to recover damages, a plaintiff must show actual pecuniary loss. See *supra* note 5.

8. *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991).

9. Prob. Code § 6402.

6400) of Division 6 of the Probate Code.”<sup>10</sup> In a technical reading of this provision, the court noted that Section 250 is not located in the part of the Probate Code referred to in the wrongful death statute — Part 2 (commencing with Section 6400) of Division 6. The court held that therefore Section 250 does not affect the question of who may sue for wrongful death.<sup>11</sup>

Public policy precludes a killer from profiting from the killer’s own wrong.<sup>12</sup> This should be implemented in the statute by providing that one who feloniously and intentionally kills the decedent may not sue for wrongful death or benefit from a wrongful death action brought by the decedent’s personal representative,<sup>13</sup> and that the question of who may sue is determined as if the killer had predeceased the decedent.<sup>14</sup>

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10. Code Civ. Proc. § 377. Section 377 was repealed and reenacted as Section 377.60 by 1992 Cal. Stat. ch. 178, §§ 19-20. See generally *Litigation Involving Decedents*, 22 Cal. L. Revision Comm’n Reports 895 (1992).

11. It is doubtful that the murdering mother in *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991), could have successfully sued her co-conspirator for wrongful death of her child. Consent of the plaintiff is generally a complete defense to tort liability. Consent may consist of voluntary participation or acquiescence in acts otherwise amounting to an intentional tort. 5 B. Witkin, *Summary of California Law Torts* § 271, at 351 (9th ed. 1988).

12. See Prob. Code § 253; Civ. Code § 3517 (“[n]o one can take advantage of his own wrong”); Uniform Probate Code § 2-803, comment (1990).

13. The decedent’s personal representative is a proper party plaintiff in an action for the decedent’s wrongful death. See *supra* note 1.

14. If a person entitled to sue for wrongful death disclaims all interest in the decedent’s estate, the disclaiming heir may still sue for wrongful death. The right does not pass to those next in line to inherit. *Mayo v. White*, 178 Cal. App. 3d 1083, 224 Cal. Rptr. 373 (1986); *Lewis v. Regional Center of the East Bay*, 174 Cal. App. 3d 350, 220 Cal. Rptr. 89 (1985). The Commission would not change this rule.

## RECOMMENDED LEGISLATION

**Code Civ. Proc. 377 (amended). Parties in wrongful death action**

377. (a) When the death of a person is caused by the wrongful act or neglect of another, his or her heirs or personal representatives on their behalf may maintain an action for damages against the person causing the death, or in case of the death of such wrongdoer, against the personal representative of such wrongdoer, whether the wrongdoer dies before or after the death of the person injured. If any other person is responsible for any such wrongful act or neglect, the action may also be maintained against such other person, or in case of his or her death, his or her personal representatives. In every action under this section, such damages may be given as under all the circumstances of the case, may be just, but shall not include damages recoverable under Section 573 of the Probate Code. The respective rights of the heirs in any award shall be determined by the court. Any action brought by personal representatives of the decedent pursuant to the provisions of Section 573 of the Probate Code may be joined with an action arising out of the same wrongful act or neglect brought pursuant to the provisions of this section. If an action be brought pursuant to the provisions of this section and a separate action arising out of the same wrongful act or neglect be brought pursuant to the provisions of Section 573 of the Probate Code, such actions shall be consolidated for trial on the motion of any interested party.

(b) For the purposes of subdivision (a), "heirs" means only the following:

(1) ~~Those~~ *The decedent's surviving spouse, children, and issue of deceased children, or, if none, the persons who would be entitled to succeed to the property of the decedent*

~~according to the provisions of Part 2 (commencing with Section 6400) of Division 6 of the Probate Code by *intestate succession*.~~

(2) Whether or not qualified under paragraph (1), if they were dependent on the decedent, the putative spouse, children of the putative spouse, stepchildren, and parents. As used in this paragraph, “putative spouse” means the surviving spouse of a void or voidable marriage who is found by the court to have believed in good faith that the marriage to the decedent was valid, and

(3) Minors, whether or not qualified under paragraphs (1) or (2), if, at the time of the decedent’s death, they resided for the previous 180 days in the decedent’s household and were dependent upon the decedent for one half or more of their support.

Nothing in this subdivision shall be construed to change or modify the definition of “heirs” under any other provisions of law.

**Comment.** Paragraph (1) of subdivision (b) of Section 377 is amended to refer specifically to the decedent’s surviving spouse, children, and issue of deceased children, as proper parties plaintiff in a wrongful death action. This makes clear that, even if the decedent’s estate is entirely community property, the decedent’s children and issue of deceased children are proper parties plaintiff, along with the decedent’s surviving spouse. This codifies *Fiske v. Wilkie*, 67 Cal. App. 2d 440, 444, 154 P.2d 725 (1945).

Under Probate Code Section 258, Section 377 is subject to the rules relating to the effect of homicide. This changes the rule of *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991).

**Note.** Section 377 was repealed and reenacted as Section 377.60-377.62 by 1992 Cal. Stat. ch. 178, §§ 19-20, implementing the proposed amendment to Section 377. See generally *Litigation Involving Decedents*, 22 Cal. L. Revision Comm’n Reports 895 (1992).

**Prob. Code § 258 (added). Action for wrongful death**

258. A person who feloniously and intentionally kills the decedent is not entitled to bring an action for wrongful death of the decedent, or to benefit from the action if brought by the decedent's personal representative. The persons who may bring an action for wrongful death of the decedent and to benefit from the action are determined as if the killer had predeceased the decedent.

**Comment.** Section 258 is new and changes the rule of *Marks v. Lyerla*, 1 Cal. App. 4th 556, 2 Cal. Rptr. 2d 63 (1991). See also Code Civ. Proc. § 377 (persons who may sue for wrongful death).

**APPENDIX 6**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

REVISED RECOMMENDATION

Recognition of Agent's Authority Under  
Statutory Form Power of Attorney

April 1992

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 22 Cal. L. Revision Comm'n Reports 965 (1992).

STATE OF CALIFORNIA

PETE WILSON, Governor

CALIFORNIA LAW REVISION COMMISSION  
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COLIN W. WIED

April 23, 1992

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

The Uniform Statutory Form Power of Attorney Act was enacted on Commission recommendation in 1990. See Civ. Code §§ 2475-2499.5, enacted by 1990 Cal. Stat. ch. 986. This recommendation would make the statutory form more effective by providing that a third person may be compelled to honor the agent's authority under the statutory form to the same extent as the principal could compel the third person to act. A third person who acts unreasonably in refusing to honor the agent's authority under the statutory form would be liable for attorney's fees in an action to compel acceptance. The recommended legislation would also protect third persons whose refusal is required by a state or federal statute or regulation.

This study is authorized by Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 33 of the Statutes of 1991.

Respectfully submitted,

Edwin K. Marzec  
*Chairperson*



## RECOGNITION OF AGENT'S AUTHORITY UNDER STATUTORY FORM POWER OF ATTORNEY

The Uniform Statutory Form Power of Attorney Act was enacted in 1990 to provide a simple, readily understandable, and widely usable power of attorney form.<sup>1</sup> In order to fully accomplish its purposes, the statutory form needs to be accepted by third persons with whom the agent desires to transact business on behalf of the principal. Judging from past experience with powers of attorney prepared by attorneys and with statutory and nonstatutory forms, the intentions of persons who believe they have put their affairs in order, consistent with the applicable law, have been frustrated by the unwillingness of some third persons to honor a power of attorney and accept the authority of the agent under a power of attorney.<sup>2</sup> In many cases, this reluctance may simply be a bureaucratic reaction to the variety of powers of attorney that the particular business or institution may encounter. Some businesses have adopted a general policy of not honoring powers of attorney unless executed on a form approved by the business itself. In other cases, a third person may genuinely be in doubt as to the authority of the agent even after taking the time to examine the power of attorney.

Existing law attempts to deal with this problem by protecting third persons from liability in specified

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1. Civ. Code §§ 2475-2499.5, enacted by 1990 Cal. Stat. ch. 986, § 2. This legislation was enacted on recommendation of the Law Revision Commission. See *Recommendation Relating to Uniform Statutory Form Power of Attorney Act*, 20 Cal. L. Revision Comm'n Reports 415 (1990).

2. See, e.g., Montgomery & Wright, *Durable Powers of Attorney for Property Management*, in 1992 California Durable Power of Attorney Handbook §§ 2.56-2.61 (Cal. Cont. Ed. Bar), discussing policies of banks with regard to accounts, safe deposit boxes, and trusts, and of title companies, insurance companies, and stock transfer agents.

circumstances. Civil Code Section 2404 protects a third person who relies on the agent's affidavit in support of the statutory form, the same as any other power of attorney.<sup>3</sup> This affidavit protects a third person from liability for actions undertaken in good faith reliance on the affidavit as to issues of termination and revocation of the power of attorney,<sup>4</sup> but has no compulsory effect on third persons. Similarly, Civil Code Section 2512 protects a third person who acts in good faith reliance on a power of attorney, including a statutory form power of attorney,<sup>5</sup> if the power of attorney is presented by the named agent, appears to be valid on its face, and includes a notary public's acknowledgment.<sup>6</sup> This protection should work well with a statutory form power of attorney presented to a third person by the agent named in the instrument because the statute requires it to be acknowledged before a notary public<sup>7</sup> and the facial validity of the form should be easy to determine. As before, however, these provisions encourage, but do not compel, acceptance by third persons.

The Law Revision Commission recommends adding a provision to the Uniform Statutory Form Power of Attorney

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3. For background on Civil Code Section 2404, see *Recommendation Relating to Uniform Durable Power of Attorney Act*, 15 Cal. L. Revision Comm'n Reports 351 (1980). This general provision in the Uniform Durable Power of Attorney Act (Civ. Code §§ 2400-2407) applies to the Uniform Statutory Form Power of Attorney Act (Civ. Code §§ 2475-2499.5) as provided in Civil Code Section 2480(a).

4. The appropriate extent of the protection afforded by Civil Code Section 2404 for powers of attorney generally is the subject of another recommendation of the Law Revision Commission. See also *Recommendation Relating to Recognition of Trustees' Powers*, 20 Cal. L. Revision Comm'n Reports 2849 (1990).

5. See Civ. Code § 2480(c).

6. For background on Civil Code Section 2512, see *Recommendation Relating to Durable Powers of Attorney*, 18 Cal. L. Revision Comm'n Reports 305 (1986).

7. See Civ. Code §§ 2475 (form), 2476(c) (acknowledgment of principal's signature).

Act to address these problems.<sup>8</sup> The proposed legislation would permit the agent under a properly executed statutory form power of attorney to bring an action to compel a third person to accept the agent's authority unless the principal would not be able to compel the third person to act if an action were brought on the principal's own behalf.<sup>9</sup> This provision would permit an action against a business, insurance company, financial institution, or other person who holds property of the principal, who owes a debt to the principal, or who owes a duty or performance to the principal. It would not permit the agent to compel a third person to act where the principal could not do so. Thus, a business that could choose not to accept the principal as a customer would be completely free to decline to deal with the agent.

In order to make the proposed remedy effective, the proposed legislation also requires the court to award attorney's fees in an action to compel acceptance of the agent's authority if the court finds that the third person acted unreasonably in refusing to accept the agent's authority.<sup>10</sup> The proposed legislation makes clear, however, that a third person would not be acting unreasonably if the refusal to accept the agent's authority under the power of attorney was authorized or required by a state or federal statute or regulation. On the other hand, the proposed legislation provides that a third person will not be found to

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8. This revised recommendation replaces an earlier recommendation on this same subject. See *Recommendation Relating to Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 20 Cal. L. Revision Comm'n 2629 (1990).

9. This rule is similar to the power of a decedent's successor to enforce delivery or payment of property under the affidavit procedure for collection and transfer of property of a small estate. See Prob. Code § 13105(b). The general power of attorney statute in Minnesota also contains a similar provision. See Minn. Stat. Ann. § 523.20 (West Supp. 1990).

10. This provision is also drawn from the affidavit procedure for collection and transfer of a small estate to a successor. See Prob. Code § 13105(b).

have acted reasonably if the sole reason for refusing to accept the agent's authority was insistence on use of the third person's own form.

## RECOMMENDED LEGISLATION

**Civ. Code § 2412 (amended). Relief available**

2412. Except as provided in Section 2412.5, a petition may be filed under this article for any one or more of the following purposes:

(a) Determining whether the power of attorney is in effect or has terminated.

(b) Passing on the acts or proposed acts of the attorney in fact.

(c) Compelling the attorney in fact to submit his or her accounts or report his or her acts as attorney in fact to the principal, the spouse of the principal, the conservator of the person or the estate of the principal, or to such other person as the court in its discretion may require, if the attorney in fact has failed to submit an accounting and report within 60 days after written request from the person filing the petition.

(d) Declaring that the power of attorney is terminated upon a determination by the court of all of the following:

(1) The attorney in fact has violated or is unfit to perform the fiduciary duties under the power of attorney.

(2) At the time of the determination by the court, the principal lacks the capacity to give or to revoke a power of attorney.

(3) The termination of the power of attorney is in the best interests of the principal or the principal's estate.

*(e) Compelling a third person to honor the authority of an agent under a statutory form power of attorney pursuant to Section 2480.5.*

**Comment.** Section 2412 is amended to add subdivision (e) which recognizes the remedy provided under Section 2480.5 (compelling third person to honor statutory form power of attorney).

**Civ. Code § 2480.5 (added). Compelling third person to honor statutory form power of attorney; liability for attorney's fees**

2480.5. (a) If a third person to whom a properly executed statutory form power of attorney under this chapter is presented refuses to honor the agent's authority under the power of attorney within a reasonable time, the third person may be compelled to honor the agent's authority under the power of attorney, in an action for this purpose brought against the third person, except that the third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances.

(b) If an action is brought under this section, the court shall award attorney's fees to the agent if the court finds that the third person acted unreasonably in refusing to accept the agent's authority under the statutory form power of attorney.

(c) For the purpose of subdivision (b) and without limiting other grounds that may constitute a reasonable refusal to accept an agent's authority under a statutory form power of attorney, a third person does not act unreasonably in refusing to accept the agent's authority if the refusal is authorized or required by a provision of a state or federal statute or regulation.

(d) Notwithstanding subdivision (c), a third person's refusal to accept an agent's authority under a statutory form power of attorney under this chapter is unreasonable if the only reason for the refusal is that the power of attorney is not on a form prescribed by the third person to whom the power of attorney is presented.

(e) The remedy provided in this section is cumulative and nonexclusive.

**Comment.** Section 2480.5 is a new provision not found in the Uniform Statutory Form Power of Attorney Act (1988). Subdivisions (a) and (b) are drawn in part from Probate Code Section 13105(b)

(compelling payment or delivery under affidavit procedure for collection or transfer of personal property of small estate). See also Section 2404 (affidavit of lack of knowledge of termination of power of attorney).

Subdivision (a) permits an agent to bring an action to compel a third person to honor a statutory form power of attorney only to the extent that the principal, disregarding any legal disability, could bring an action to compel the third person to act. Under this rule, a third person who could not be forced to do business with the principal consequently may not be forced to deal with the agent. However, a third person who holds property of the principal, who owes a debt to the principal, or who is obligated by contract to the principal may be compelled to accept the agent's authority.

In addition, as provided in subdivision (b), if the refusal to deal with the agent is found to be unreasonable, the third person will also be liable for attorney's fees incurred in the action to compel compliance. The determination of reasonableness depends on the particular circumstances of each case. A person to whom the power of attorney is presented may, for example, act reasonably in refusing to accept the agent's authority where it is not clear that the power of attorney grants the agent authority with respect to the particular transaction. Likewise, a third person may reasonably refuse to honor the power of attorney if, for example, the person is not reasonably satisfied as to the identity of the agent or has information that would lead a reasonable person to question the validity of the power of attorney. See also Section 2512 (protection of person relying in good faith).

Subdivision (c) provides some specific guidelines as to the meaning of the reasonableness rule in subdivision (b) as it relates to the liability for attorney's fees. However, subdivision (d) makes clear that an institution's preference for its own power of attorney form is never a reasonable ground for refusing to accept the authority of an agent under a properly executed and effective statutory form power of attorney.

The general provisions governing judicial proceedings concerning powers of attorney under Sections 2410-2423 apply to the remedies set forth in Section 2480.5. See Sections 2412(e), 2480(b).



## APPENDIX 7

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 178 OF THE STATUTES OF 1992 (SENATE BILL 1496)

Chapter 178 of the Statutes of 1992 was introduced as Senate Bill 1496 by the Senate Committee on Judiciary, and carried by Senator Bill Lockyer, on recommendation of the California Law Revision Commission. Except as indicated below, Comments to the sections in Chapter 178 are set out in the following Commission reports:

- *Litigation Involving Decedents*, 22 Cal. L. Revision Comm'n Reports 895 (1992) (revised recommendation). See Appendix 4 in this Annual Report.
- *Standing to Sue for Wrongful Death*, 22 Cal. L. Revision Comm'n Reports 955 (1992) (tentative recommendation). See Appendix 5 in this Annual Report.
- *Recognition of Agent's Authority Under Statutory Form Power of Attorney*, 22 Cal. L. Revision Comm'n Reports 965 (1992) (revised recommendation). See Appendix 6 in this Annual Report.
- *Nonprobate Transfer to Trustee Named in Will*, 21 Cal. L. Revision Comm'n Reports 201 (1991).
- *Preliminary Distribution Without Court Supervision*, 21 Cal. L. Revision Comm'n Reports 209 (1991).
- *Notice of Trustees' Fees*, 21 Cal. L. Revision Comm'n Reports 191 (1991).
- *Recognition of Trustees' Powers*, 20 Cal. L. Revision Comm'n Reports 2849 (1990).

The Comments in these materials remain applicable to Chapter 178, except to the extent that they are replaced by

the revised comments set out below, which reflect amendments to the bill made during the legislative process.

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## FORM OF ACKNOWLEDGMENT OF POWER OF ATTORNEY

Legislation enacted in 1990 changed the form of the certificate of acknowledgment. See Civ. Code §§ 1188-1190. The form of the “Certificate of Acknowledgment of Notary Public” set out in the Statutory Form Power of Attorney (Civil Code Section 2475) does not use the new general form of acknowledgment. Statutory power of attorney forms should not have to be reprinted merely to adopt the language used in Civil Code Section 1189. However, a certificate that uses the language of Civil Code Section 1189 should also be sufficient to satisfy the requirements for the statutory form, even though the certificate does not use the precise language set out in Section 2475.

### **Civ. Code § 2476 (amended). Form of acknowledgment of power of attorney**

2476. A statutory form power of attorney under this chapter is legally sufficient if all of the following requirements are satisfied:

(a) The wording of the form complies substantially with Section 2475. A form does not fail to comply substantially with Section 2475 merely because the form does not include the provisions of Section 2475 relating to designation of coagents. A form does not fail to comply substantially with Section 2475 merely because the form uses the sentence “Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation” in place of the sentence “Revocation of the power of attorney is not effective as to a third party until the third party has

actual knowledge of the revocation,” in which case the form shall be interpreted as if it contained the sentence “Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation.”

(b) The form is properly completed.

(c) The signature of the principal is acknowledged. *Notwithstanding Sections 1188 and 1189, the certificate of acknowledgment of notary public required by Section 2475 is sufficient if it is in substantially the form set out in either Section 2475 or Section 1189.*

**Comment.** Section 2476 is amended to make clear that the certificate of acknowledgment of the notary public required in a statutory form power of attorney is sufficient if it is substantially in the form set out in Section 2475 or substantially in the form set out in the general statute governing certificates of acknowledgment (Civil Code Section 1189).

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## NONPROBATE TRANSFER TO TRUSTEE NAMED IN WILL

### **Probate Code § 6320 (amended). Transfer to testamentary trust**

**Comment.** Former subdivision (a) of Section 6320 is redesignated as subdivision (b), and is amended to define “instrument” as used in Section 6321. Formerly, Section 6321 referred to a “contract or plan” which was defined in Section 6320. Former subdivision (b) is redesignated as subdivision (a) for purposes of alphabetization.

The basic definition of “instrument” is in Section 45. The definition of “instrument” in Section 6320 makes clear the scope and application of this chapter.

Paragraph (2) of subdivision (b) is amended to add “employee benefit plan.” This includes both employee welfare benefit plans and employee pension benefit plans, and is consistent with the intent to make the definition of “instrument” broadly inclusive.

Paragraph (3) of subdivision (b) is amended to refer to individual “retirement” annuities or accounts, consistent with Section 408 of the Internal Revenue Code.

The former reference in paragraph (3) to the Internal Revenue Code as “now or hereafter amended” is revised to eliminate duplicative language. See Section 7 (reference to a law applies to all amendments and additions heretofore or hereafter made).

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## INTEREST AND INCOME ON TRUST DISTRIBUTIONS

### **Prob. Code § 16314 (amended). Interest and income on trust distributions**

16314. (a) A specific gift, a general pecuniary gift, an annuity, or a gift for maintenance distributable under a trust carries with it income and bears interest ~~from the date of the settlor's death or other event upon which the distributee's right to receive the gift occurs,~~ in the same manner as a specific devise, a general pecuniary devise, an annuity, or a devise for maintenance under a will *as* set forth in Chapter 8 (commencing with Section 12000) of Part 10 of Division 7.

(b) For the purpose of this section, a reference in Chapter 8 (commencing with Section 12000) of Part 10 of Division 7 to the date of the testator's death means the date of the settlor's death or other event upon which the distributee's right to receive the gift occurs.

**Comment.** Subdivision (a) of Section 16314 is amended to make clear that the policy of this section is to apply to trusts the same rules that apply to estates. Thus, the one-year delay rule applicable to interest on distributions from decedents' estates under Chapter 8 (commencing with Section 12000) of Part 10 of Division 7 also applies to trust distributions, whether the right to the distribution arises on the settlor's death or on the occurrence of some other event. In effect, this section provides a one-year grace period within which the trustee may pay pecuniary gifts without interest whether or not the event giving rise to the right to distribution is the death of the settlor. The rate of interest payable on trust distributions parallels the rate of interest payable in probate administration. See Section 12001 (rate of interest). The trust instrument may vary the rules provided in this section. See Section 16302.

This amendment is intended as a technical, nonsubstantive clarification of the existing rule and applies to the extent provided in Section 16315 (application to trust created before July 1, 1989). See Section 3(c).



## APPENDIX 8

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTERS 355 AND 572 OF THE STATUTES OF 1992 (ASSEMBLY BILL 3328 AND SENATE BILL 1455)

Two bills introduced on recommendation of the California Law Revision Commission amended Probate Code Section 2580:

(1) Chapter 355 of the Statutes of 1992 was introduced as Assembly Bill 3328 by Assembly Member Paul V. Horcher and implements the Commission's recommendation *Special Needs Trust for Disabled Minor or Incompetent Person*, 22 Cal. L. Revision Comm'n Reports 989 (1992) (Appendix 11 in this Annual Report).

(2) Chapter 572 of the Statutes of 1992 was introduced as Senate Bill 1455 by Senator Henry J. Mello and implements the Commission's recommendation *Transfer of Conservatorship Property to Trust*, 21 Cal. L. Revision Comm'n Reports 219 (1991).

The revised Comment set out below combines the text of the Comments to Probate Code Section 2580 in these two recommendations and replaces them.

#### **Prob. Code § 2580 (amended). Petition to authorize proposed action**

**Comment.** Paragraph (5) of subdivision (b) of Section 2580 is amended to make clear that a special needs trust for money paid pursuant to a compromise or judgment for a conservatee may only be established under Chapter 4 (commencing with Section 3600) of Part 8. See Sections 3602-3605.

Section 2580 is also amended to add paragraph (6) to subdivision (b). If property is discovered after the conservatee's death that has been unintentionally omitted from a trust created by the conservator

or conservatee, the conservator has control of the property pending its disposition according to law. Prob. Code § 2467. See also Prob. Code § 2630 (continuing jurisdiction of court).

## APPENDIX 9

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 51 OF THE STATUTES OF 1992 (ASSEMBLY BILL 1719)

Chapter 51 of the Statutes of 1992 was introduced as Assembly Bill 1719 by Assembly Member Paul V. Horcher on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 51 are set out in the Commission's recommendation *Nonprobate Transfers of Community Property*, 21 Cal. L. Revision Commission Reports 163 (1991). These Comments remain applicable to Chapter 51, except for the revised Comment set out below which reflects an amendment to the bill made in the Senate.

#### **Prob. Code § 5010 (amended). “Written consent” defined**

**Comment.** Section 5010 is intended for drafting convenience. Written joinder in a provision for a nonprobate transfer includes joint action by both spouses in writing. A written consent, to be effective, need not satisfy the statutory requirements for a transmutation. See Section 5022 (written consent not a transmutation). A written consent becomes irrevocable on death of either spouse. Section 5030 (revocability of written consent).

It should be noted that the validity of a purported written consent is subject to relevant common law and statutory defenses, including but not limited to fraud, undue influence, misrepresentation, and violation of the special fiduciary duty applicable in transactions between spouses. See, e.g., Civ. Code § 5103.



## APPENDIX 10

### REPORT OF THE CALIFORNIA LAW REVISION COMMISSION ON CHAPTER 283 OF THE STATUTES OF 1992 (SENATE BILL 1372)

Chapter 283 of the Statutes of 1992 was introduced as Senate Bill 1372 by Senator Wadie P. Deddeh on recommendation of the California Law Revision Commission. Comments to the sections in Chapter 283 are set out in the Commission's recommendation *Miscellaneous Creditors' Remedies Matters*, 21 Cal. L. Revision Commission Reports 135 (1991). These Comments remain applicable to Chapter 283, except for the revised Comment set out below which reflects an amendment to the bill made in the Senate.

#### **Code Civ. Proc. § 706.032 (added). Termination of dormant or suspended order**

**Comment.** Section 706.032 is new. This section provides for the automatic termination of dormant or suspended earnings withholding orders in favor of general creditors. If the debtor leaves employment after an earnings withholding order has become effective, the duty to withhold continues for 180 days under subdivision (a)(1). If the debtor returns to work during this period, the employer is required to resume withholding pursuant to the order. If withholding under a general creditor's earnings withholding order is suspended because of withholding under an earnings withholding order or assignment for support or an earnings withholding order for taxes, the suspended order remains in effect until two years have elapsed with no withholding. See Sections 706.030 (support orders), 706.031 (wage assignment for support), 706.078 (tax orders).

The employer has a duty under subdivision (b) to determine whether an earnings withholding order has terminated under subdivision (a) and to return the order to the levying officer.

For a special rule concerning termination of earnings withholding orders for support, see Section 706.030(b)(1). For a special rule

concerning termination of earnings withholding orders for taxes, see Section 706.078(c).

If the debtor is not employed and no earnings are due when the withholding period would begin under Section 706.022, the service of the order is ineffective and is not subject to the 180-day rule or two-year rule in this section. See Section 706.104(a).

**APPENDIX 11**

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION

**Special Needs Trust for  
Disabled Minor or Incompetent Person**

April 1992

California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303-4739

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Special Needs Trust for Disabled Minor or Incompetent Person*, 22 Cal. L. Revision Comm'n Reports 989 (1992).

STATE OF CALIFORNIA

PETE WILSON, Governor

## CALIFORNIA LAW REVISION COMMISSION

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July 10, 1992

To: The Honorable Pete Wilson  
*Governor of California*, and  
The Legislature of California

This recommendation permits a court giving judgment or approving a settlement for a disabled minor or incompetent adult to order that the proceeds be paid into a special needs trust that will preserve the plaintiff's eligibility for public benefits such as social security and Medi-Cal. Authority for a court-established special needs trust will enable a minor or incompetent person who is disabled in an accident to have the same benefit as a disabled child whose parents have the means to establish a private special needs trust.

This recommendation also clarifies the right of state and county agencies to be reimbursed from trust assets on the beneficiary's death or on termination of the trust for benefits provided to the trust beneficiary, and provides important procedural protections to effectuate the right of reimbursement.

This study is authorized by Resolution Chapter 37 of the Statutes of 1980, continued in Resolution Chapter 33 of the Statutes of 1991.

Respectfully submitted,

Edwin K. Marzec  
*Chairperson*



## SPECIAL NEEDS TRUST FOR DISABLED MINOR OR INCOMPETENT PERSON

If a child has a disability that makes the child eligible for public benefits, the child's parents with sufficient means may create a "special needs trust" for the child to supplement public benefits.<sup>1</sup> A special needs trust is a form of discretionary spendthrift trust designed to preserve public assistance benefits for a disabled beneficiary. The trust instrument typically provides that the trust is an emergency backup fund secondary to public resources, and directs the trustee to seek out and obtain available public benefits, particularly social security benefits and Medi-Cal. If these benefits are unavailable or insufficient, the trust instrument authorizes the trustee to supplement the benefits for the beneficiary's health, safety, and welfare. Examples of special needs not normally provided by social security or Medi-Cal that the trust may provide include dental care, special equipment such as a wheelchair, ramp access, vehicle modification for the disabled, and programs for the handicapped such as independence training and recreational programs. If the trust instrument is properly drawn, the existence of trust assets generally should not disqualify the beneficiary from receiving public benefits.<sup>2</sup>

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1. Prensky & Ross, *Public Benefit Planning for the Elderly and Disabled*, in Sixteenth Annual USC Probate and Trust Conference at 40 (U.S.C. Law Center, Oct. 26, 1990).

2. E.g., Prensky & Ross, *supra* note 1, at 40-50; Frolik, *Discretionary Trusts for a Disabled Beneficiary: A Solution or a Trap for the Unwary?*, 46 U. Pitt. L. Rev. 335, 341-44 (1985) (under "federal law, a properly drawn discretionary trust will not be considered 'property' or an 'asset' of the beneficiary"); McMullen, *Family Support of the Disabled: A Legislative Proposal to Create Incentives to Support Disabled Family Members*, 23 U. Mich. J.L. Ref. 439 (1990); Mooney, *Discretionary Trusts: An Estate Plan to Supplement Public Assistance for Disabled Persons*, 25 Ariz. L. Rev. 939 (1983); Comment, *Probate Code Section 15306: Discretionary Trusts as a Financial Solution for the Disabled*, 37 UCLA L. Rev. 595 (1990).

But if a minor or incompetent person receives damages or settlement proceeds under a judgment or court order, there is no authority for the court to direct the proceeds to be paid to a special needs trust.<sup>3</sup> If the minor or incompetent person has severe permanent disability resulting from an accident, payment of the judgment or settlement to a guardian or conservator or to an account in the disabled person's name may disqualify the person from receiving public benefits, such as Medi-Cal.<sup>4</sup> A disabled minor or incompetent person entitled to damages has just as urgent a need for public medical and other benefits as does a disabled child whose parents have the means to establish a special needs trust that preserves the child's eligibility for benefits.

The Commission recommends authorizing the court giving judgment or approving the settlement to direct that money payable to a disabled minor or incompetent person under the judgment or order be paid to a trustee of a special needs trust under terms approved by the court. This will put a disabled minor or incompetent person who is entitled to personal injury damages or settlement proceeds on an equal footing

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3. Before July 1, 1991, some lawyers were creating, and courts were approving, special needs trusts for proceeds of personal injury settlements or damages payable to a disabled minor or incompetent person. Letter from Edmond R. Davis to Arthur K. Marshall (June 13, 1991) (copy on file in office of California Law Revision Commission); letter from Sterling L. Ross, Jr., to Valerie J. Merritt (July 22, 1991) (copy on file in office of California Law Revision Commission). This was done under former statutory language that authorized the court to direct that the proceeds be deposited in a "trust company authorized to transact a trust business in this state." Former Prob. Code §§ 3602, 3611 (repealed July 1, 1991). This language was not continued in the new Probate Code. See Prob. Code §§ 3602, 3611 (operative July 1, 1991). It is not clear that the "trust company" language of former law was sufficient to authorize special needs trusts. The Commission is informed that many courts are still approving special needs trusts, and that challenges to these trusts by state agencies have been generally unsuccessful. Some local court rules may effectively forbid such trusts. See Merced County Probate Rules, Rule 1712; Solano County Probate Rules, Rule 7.69 (guardianship required where assets exceed \$20,000); Stanislaus County Probate Policy Manual, Rule 1901. These rules are reprinted in California Local Probate Rules (12th ed., Cal. Cont. Ed. Bar 1991).

4. See Prensky & Ross, *supra* note 1, at 42-50.

with a disabled child whose parents have the means to establish such a trust.

The Commission also recommends provisions to prevent abuse of court-ordered special needs trusts and to protect the interests of the Department of Health Services, Department of Mental Health, Department of Developmental Services, and county agencies that have provided benefits to the disabled person:

(1) Trust terms must be reviewed and approved by the court.

(2) The court must require that all statutory liens in favor of designated public agencies shall be satisfied before payment of money to the trust.

(3) The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court.

(4) The court must determine that the minor or incompetent person has a substantial disability and is likely to have special needs that will not be met without the trust, and that the money to be paid to the trust does not exceed the amount needed to meet those special needs.

(5) Any of the designated public agencies may petition to terminate the trust if the agency has a claim against trust property, and if either the conditions for establishing the trust are no longer satisfied or the trustee refuses without good cause to make payments for the special needs of the beneficiary.

(6) While the trust is in existence, the statute of limitations on claims of the designated agencies is tolled.

(7) On death of the beneficiary or on termination of the trust, trust property is subject to claims of the designated agencies for benefits provided, to the extent authorized by

law,<sup>5</sup> as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.

(8) The trustee must give notice to the designated agencies on death of the beneficiary or on termination of the trust. The agency has four months after notice to make the claim. Failure to give the notice prevents the running of the statute of limitations against the claim.

(9) If trust property is distributed less than four months after notice, the designated agency may proceed against distributees of trust property for reimbursement.

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5. See, e.g., 42 U.S.C. § 1396p(b)(1)(B) (Medicaid); Welf. & Inst. Code §§ 7513-7513.2 (state hospital costs), 14009.5 (Medi-Cal). See also Welf. & Inst. Code §§ 7277.1, 7278, 7279 (mentally disordered), 17109, 17403 (counties).

## RECOMMENDED LEGISLATION

**Prob. Code § 2580 (amended). Order of court**

2580. (a) The conservator or other interested person may file a petition under this article for an order of the court authorizing or requiring the conservator to take a proposed action for any one or more of the following purposes:

(1) Benefiting the conservatee or the estate.

(2) Minimizing current or prospective taxes or expenses of administration of the conservatorship estate or of the estate upon the death of the conservatee.

(3) Providing gifts for such *any* purposes, and to such *any* charities, relatives (including the other spouse), friends, or other objects of bounty, as would be likely beneficiaries of gifts from the conservatee.

(b) The action proposed in the petition may include, but is not limited to, the following:

(1) Making gifts of principal or income, or both, of the estate, outright or in trust.

(2) Conveying or releasing the conservatee's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Exercising or releasing the conservatee's powers as donee of a power of appointment.

(4) Entering into contracts.

(5) Creating for the benefit of the conservatee or others, revocable or irrevocable trusts of the property of the estate, which trusts may extend beyond the conservatee's disability or life. *A special needs trust for money paid pursuant to a compromise or judgment for a conservatee may be established only under Chapter 4 (commencing with Section 3600) of Part 8, and not under this article.*

(6) Exercising options of the conservatee to purchase or exchange securities or other property.

(7) Exercising the rights of the conservatee to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights under any of the following:

(i) Life insurance policies, plans, or benefits.

(ii) Annuity policies, plans, or benefits.

(iii) Mutual fund and other dividend investment plans.

(iv) Retirement, profit sharing, and employee welfare plans and benefits.

(8) Exercising the right of the conservatee to elect to take under or against a will.

(9) Exercising the right of the conservatee to disclaim any interest that may be disclaimed under Part 8 (commencing with Section 260) of Division 2.

(10) Exercising the right of the conservatee (i) to revoke a revocable trust or (ii) to surrender the right to revoke a revocable trust, but the court shall not authorize or require the conservator to exercise the right to revoke a revocable trust if the instrument governing the trust (i) evidences an intent to reserve the right of revocation exclusively to the conservatee, (ii) provides expressly that a conservator may not revoke the trust, or (iii) otherwise evidences an intent that would be inconsistent with authorizing or requiring the conservator to exercise the right to revoke the trust.

(11) Making an election referred to in Section 13502 or an election and agreement referred to in Section 13503.

**Comment.** Paragraph (5) of subdivision (b) of Section 2580 is amended to make clear that a special needs trust for money paid pursuant to a compromise or judgment for a conservatee may only be established under Chapter 4 (commencing with Section 3600) of Part 8. See Sections 3602-3605.

**Prob. Code § 3602 (amended). Disposition of remaining balance**

3602. (a) If there is no guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid, delivered, deposited, or invested as provided in Article 2 (commencing with Section 3610).

(b) Except as provided in ~~subdivision~~ *subdivisions (c) and (d)*, if there is a guardianship of the estate of the minor or conservatorship of the estate of the incompetent person, the remaining balance of the money and other property (after payment of all expenses, costs, and fees as approved and allowed by the court under Section 3601) shall be paid or delivered to the guardian or conservator of the estate. Upon application of the guardian or conservator, the court making the order or giving the judgment referred to in Section 3600 or the court in which the guardianship or conservatorship proceeding is pending may, with or without notice, make an order that all or part of the money paid or to be paid to the guardian or conservator under this subdivision be deposited or invested as provided in Section 2456.

(c) Upon ex parte petition of the guardian or conservator or upon petition of any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may for good cause shown order either or both of the following:

(1) That all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be deposited in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon authorization of the court.

(2) If there is a guardianship of the estate of the minor, that all or part of the remaining balance of money and other property not become a part of the guardianship estate and instead be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

*(d) Upon petition of the guardian, conservator, or any person interested in the guardianship or conservatorship estate, the court making the order or giving the judgment referred to in Section 3600 may order that all or part of the remaining balance of money not become a part of the guardianship or conservatorship estate and instead be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person.*

(d)

*(e) If the petition is by a person other than the guardian or conservator, notice of hearing on a petition under subdivision (c) shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.*

*(f) Notice of the time and place of hearing on a petition under subdivision (d), and a copy of the petition, shall be mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing.*

**Comment.** Section 3602 is amended to add authority for the court to order that money of a minor or incompetent person be paid to a special needs trust established under Section 3604. As provided in Section 3604(d), before payment to the trustee, liens authorized by the Welfare and Institutions Code must first be satisfied. See, e.g., Welf. & Inst. Code §§ 7282.1, 14124.71-14124.76, 17109, 17403.

**Prob. Code § 3604 (added). Special needs trust**

3604. (a) If a court makes an order under Section 3602 or 3611 that money of a minor or incompetent person be paid to a special needs trust, the terms of the trust shall be reviewed and approved by the court and shall satisfy the requirements of this section. The trust is subject to continuing jurisdiction of the court, and is subject to court supervision to the extent determined by the court. The court may transfer jurisdiction to the court in the proper county for commencement of a proceeding as determined under Section 17005.

(b) A special needs trust may be established and continued under this section only if the court determines all of the following:

(1) That the minor or incompetent person has a disability that substantially impairs the individual's ability to provide for the individual's own care or custody and constitutes a substantial handicap.

(2) That the minor or incompetent person is likely to have special needs that will not be met without the trust.

(3) That money to be paid to the trust does not exceed the amount that appears reasonably necessary to meet the special needs of the minor or incompetent person.

(c) If at any time it appears (1) that any of the requirements of subdivision (b) are not satisfied or the trustee refuses without good cause to make payments from the trust for the special needs of the beneficiary, and (2) that the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, or a county or city and county in this state has a claim against trust property, that department, county, or city and county may petition the court for an order terminating the trust.

(d) A court order under Section 3602 or 3611 for payment of money to a special needs trust shall include a provision

that all statutory liens in favor of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state shall first be satisfied.

**Comment.** Section 3604 is new. The section permits personal injury damages or settlement proceeds for a disabled minor or incompetent person to be delivered to a trustee of a special needs trust. In approving the terms of the trust, the court may, for example, require periodic accountings, court approval for certain kinds of investments, or the giving of a surety bond.

If the personal injury case is concluded in another jurisdiction, e.g., in federal court, a petition for supervision of the trust may be filed in the proper superior court as provided in Section 17200.

**Prob. Code § 3605 (added). Claims of certain public agencies**

3605. (a) This section applies only to a special needs trust established under Section 3604 on or after January 1, 1993.

(b) While the special needs trust is in existence, the statute of limitations otherwise applicable to claims of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state is tolled. Notwithstanding any provision in the trust instrument, at the death of the special needs trust beneficiary or on termination of the trust, the trust property is subject to claims of the State Department of Health Services, the State Department of Mental Health, the State Department of Developmental Services, and any county or city and county in this state to the extent authorized by law as if the trust property is owned by the beneficiary or is part of the beneficiary's estate.

(c) At the death of the special needs trust beneficiary or on termination of the trust, the trustee shall give notice of the beneficiary's death or the trust termination, in the manner provided in Section 1215, to all of the following:

(1) The State Department of Health Services, the State Department of Mental Health, and the State Department of Developmental Services, addressed to the director of that department at the Sacramento office of the director.

(2) Any county or city and county in this state that has made a written request to the trustee for notice, addressed to that county or city and county at the address specified in the request.

(d) Failure to give the notice required by subdivision (c) prevents the running of the statute of limitations against the claim of the department, county, or city and county not given the notice.

(e) The department, county, or city and county has four months after notice is given in which to make a claim with the trustee. If the trustee rejects the claim, the department, county, or city and county making the claim may petition the court for an order under Chapter 3 (commencing with Section 17200) of Part 5 of Division 9, directing the trustee to pay the claim. A claim made under this subdivision shall be paid as a preferred claim prior to any other distribution. If trust property is insufficient to pay all claims under this subdivision, the trustee shall petition the court for instructions and the claims shall be paid from trust property as the court deems just.

(f) If trust property is distributed before expiration of four months after notice is given without payment of the claim, the department, county, or city and county has a claim against the distributees to the full extent of the claim, or each distributee's share of trust property, whichever is less. The claim against distributees includes interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim,

whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

**Comment.** Section 3605 is new. Section 3605 permits reimbursement from special needs trusts established under Section 3604, but only on termination of the trust. Section 3605 does not affect other trusts, including special needs trusts to receive damages or settlement proceeds established pursuant to court order before the operative date of this section.

A court order under subdivision (e) directing the trustee to pay the claim or denying the claim is appealable. Section 17207.

Except for statutory liens ordered paid under subdivision (d) of Section 3604, all reimbursement rights of public agencies are deferred while the special needs trust is in existence. On the death of the special needs trust beneficiary or on termination of the trust, trust property may become subject to reimbursement claims under federal or state law. See, e.g., 42 U.S.C. § 1396p(b)(1)(B) (Medicaid); Welf. & Inst. Code §§ 7276, 7513-7513.2 (state hospital costs), 14009.5 (Medi-Cal), 17109, 17403 (counties). For this purpose and only this purpose, the trust property is treated as the beneficiary's property or as property of the beneficiary's estate.

On termination of a special needs trust, the normal rules governing distribution of property are applicable, subject to the claims reimbursement provisions of this section. See Section 15410 (disposition of property on trust termination).

**Prob. Code § 3611 (amended). Order of court**

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited

with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4 of this code; or in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interest of the minor or incompetent person.

*(c) That the remaining balance of any money be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person.*

(e)

*(d) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars (\$20,000) in value, that all or any part of the*

money and other property be held on such other conditions as the court in its discretion determines to be in the best interest of the minor or incompetent person.

(d)

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars (\$5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(e)

(f) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

**Comment.** Section 3611 is amended to add subdivision (c) to permit money of a minor or incompetent person to be paid to the trustee of a special needs trust established under Section 3604. Before payment or delivery to the trust, all statutory liens in favor of the Department of Health Services, Department of Mental Health, Department of Developmental Services, and any county or city and county in this state must first be satisfied. See Section 3604(d); Welf. & Inst. Code §§ 7282.1, 14124.71-14124.76, 17109, 17403.

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1957 Annual Report [out of print]

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1959 Annual Report

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The Right of Nonresident Aliens to Inherit

Mortgages to Secure Future Advances

The Doctrine of Worthier Title

Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving

Time Within Which Motion for New Trial May Be Made

Notice to Shareholders of Sale of Corporate Assets

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[Out of Print]

1960 Annual Report [out of print]

1961 Annual Report [out of print]

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Taking Possession and Passage of Title in Eminent Domain Proceedings [out of print]  
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 1963 Annual Report  
 1964 Annual Report  
 Recommendation and Study Relating to Condemnation Law and Procedure:  
     Number 4 — Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.]  
 Recommendations Relating to Sovereign Immunity:  
     Number 1 — Tort Liability of Public Entities and Public Employees  
     Number 2 — Claims, Actions and Judgments Against Public Entities and Public Employees  
     Number 3 — Insurance Coverage for Public Entities and Public Employees  
     Number 4 — Defense of Public Employees  
     Number 5 — Liability of Public Entities for Ownership and Operation of Motor Vehicles  
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 Article II (Judicial Notice)  
 Burden of Producing Evidence, Burden of Proof, and Presumptions (replacing URE Article III)  
 Article IV (Witnesses)

Article V (Privileges) [out of print]  
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 Proceeding  
 Improvements Made in Good Faith Upon Land Owned by Another  
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Real Property Leases

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Recommendations Relating to Probate and Estate Planning:

Non-Probate Transfers  
 Revision of the Powers of Appointment Statute  
 Tentative Recommendation Proposing the Enforcement of Judgments Law

## **VOLUME 16 (1982)**

[Out of Print]

Annual Report (December 1981) includes the following recommendation:  
 Federal Military and Other Federal Pensions as Community Property  
 Annual Report (December 1982) includes the following recommendations:  
 Division of Joint Tenancy and Tenancy in Common Property at Dissolution of  
 Marriage  
 Creditors' Remedies includes the following recommendations:  
 Amount Secured by Attachment  
 Execution of Writs by Registered Process Servers  
 Technical Amendments  
 Dismissal for Lack of Prosecution  
 Conforming Changes to the Bond and Undertaking Law  
 Notice of Rejection of Late Claim Against Public Entity  
 Recommendation Relating to:  
 Holographic and Nuncupative Wills  
 Marketable Title of Real Property  
 Statutory Bonds and Undertakings  
 Attachment  
 Probate Law and Procedure includes the following recommendations:  
 Missing Persons  
 Nonprobate Transfers  
 Emancipated Minors  
 Notice in Limited Conservatorship Proceedings  
 Disclaimer of Testamentary and Other Interests  
 1982 Creditors' Remedies Legislation [out of print]  
 Tentative Recommendation Relating to Wills and Intestate Succession

## **VOLUME 17 (1984)**

[Out of Print]

Annual Report (December 1983) (\$25.00) includes the following recommendations:  
 Effect of Death of Support Obligor  
 Dismissal for Lack of Prosecution  
 Severance of Joint Tenancy  
 Effect of Quiet Title and Partition Judgments  
 Dormant Mineral Rights  
 Creditors' Remedies includes the following recommendations:  
 Levy on Joint Deposit Accounts  
 Issuance of Earnings Withholding Orders by Registered Process Servers  
 Protection of Declared Homestead After Owner's Death  
 Jurisdiction of Condominium Assessment Lien Enforcement  
 Technical Amendments  
 Rights Among Cotenants in Possession and Out of Possession of Real Property  
 Recommendation Relating to:  
 Liability of Marital Property for Debts (January 1983) (\$8.50)  
 Durable Power of Attorney for Health Care Decisions (March 1983) (\$8.50)

- Statutory Forms For Durable Powers of Attorney [out of print]  
 Family Law (November 1983) (\$18.00) includes the following recommendations:  
   Marital Property Presumptions and Transmutations  
   Disposition of Community Property  
   Reimbursement of Educational Expenses  
   Special Appearance in Family Law Proceedings  
   Liability of Stepparent for Child Support  
   Awarding Temporary Use of Family Home  
 Probate Law (November 1983) (\$25.00) includes the following recommendations:  
   Independent Administration of Decedent's Estates  
   Distribution of Estates Without Administration  
   Execution of Witnessed Wills  
   Simultaneous Deaths  
   Notice of Will  
   Garnishment of Amounts Payable to Trust Beneficiary  
   Bonds for Personal Representatives  
   Revision of Wills and Intestate Succession Law  
   Recording Affidavit of Death  
 Statutes of Limitation for Felonies (January 1984) (\$8.50)  
 Uniform Transfers to Minors Act [out of print]

## **VOLUME 18 (1986)**

[Out of Print]

- Annual Report (March 1985) (\$25.00) includes the following recommendations:  
   Provision for Support if Support Obligor Dies  
   Transfer Without Probate of Certain Property Registered by the State  
   Dividing Jointly Owned Property Upon Marriage Dissolution  
 Annual Report (December 1985) (\$25.00) includes the following recommendations:  
   Protection of Mediation Communications  
   Recording Severance of Joint Tenancy  
   Abandoned Easements  
   Distribution Under a Will or Trust  
   Effect of Adoption or Out of Wedlock Birth on Rights at Death  
   Durable Powers of Attorney  
   Litigation Expenses in Family Law Proceedings  
   Civil Code Sections 4800.1 and 4800.2  
 Annual Report (December 1986) (\$25.00) includes the following recommendations:  
   Notice in Guardianship and Conservatorship Proceedings  
   Preliminary Provisions and Definitions of the Probate Code  
   Technical Revisions in the Trust Law  
 Recommendation Proposing the Trust Law [out of print]  
 Recommendations Relating to Probate Law (December 1985) (\$25.00) includes the following recommendations:  
   Disposition of Estates Without Administration  
   Small Estate Set-Aside  
   Proration of Estate Taxes  
 Selected 1986 Trust and Probate Legislation [out of print]

**VOLUME 19 (1988)**

Recommendations Relating to Probate Law (January 1987) (\$25.00) includes the following recommendations:

- Supervised Administration of Decedent's Estate
- Independent Administration of Estates Act
- Creditor Claims Against Decedent's Estate
- Notice in Probate Proceedings

Annual Report (December 1987) (\$25.00) includes the following recommendations:

- Marital Deduction Gifts
- Estates of Missing Persons
- The Uniform Dormant Mineral Interests Act

Recommendations Relating to Probate Law (December 1987) (\$25.00) includes the following recommendations:

- Public Guardians and Administrators
- Inventory and Appraisal
- Opening Estate Administration
- Abatement
- Accounts
- Litigation Involving Decedents
- Rules of Procedure in Probate
- Distribution and Discharge
- Nondomiciliary Decedents
- Interest and Income During Administration

Annual Report (December 1988) (\$25.00) includes the following recommendation:

- Creditors' Remedies:
  - Revival of Junior Liens Where Execution Sale Set Aside
  - Time for Setting Sale Aside
  - Enforcement of Judgment Lien on Transferred Property After Death of Transferor-Debtor

**VOLUME 20 (1990)**

Recommendations Relating to Probate Law (February 1989) (\$25.00) includes the following recommendations:

- No Contest Clauses
- 120-Hour Survival Requirement
- Hiring and Paying Attorneys, Advisors and Others
- Compensation of Personal Representative
- Multiple-Party Accounts in Financial Institutions
- Notice to Creditors in Probate Proceedings

Annual Report (December 1989) (\$25.00) includes the following recommendations:

- Commercial Lease Law: Assignment and Sublease
- Trustees' Fees

Recommendation Relating to Powers of Attorney (December 1989) (\$18.00) includes the following recommendations:

- Springing Powers of Attorney
- Uniform Statutory Form Power of Attorney

Recommendations Relating to Probate Law (December 1989) (\$25.00) includes the following recommendations:

- Notice to Creditors in Estate Administration
- Disposition of Small Estate by Public Administrator
- Court-Authorized Medical Treatment

- Survival Requirement for Beneficiary of Statutory Will
- Execution or Modification of Lease Without Court Order
- Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding
- Repeal of Probate Code Section 6402.5 (In-Law Inheritance)
- Access to Decedent's Safe Deposit Box
- Priority of Conservator or Guardian for Appointment as Administrator
- Recommendation Proposing the New Probate Code (December 1989)
- Revised and Supplemental Comments to the New Probate Code (September 1990)
  - [Note: The two publications listed above are available *only* as a set, at a cost of \$35.00 per set. The individual pamphlets are not available separately.]
- Annual Report (December 1990) (\$25.00) includes the following recommendations:
  - Notice in Probate Where Address Unknown
  - Jurisdiction of Superior Court in Trust Matters
  - Uniform Management of Institutional Funds Act
  - Discovery After Judicial Arbitration
- Recommendations Relating to Commercial Real Property Leases (May 1990) (\$8.50) includes the following recommendations:
  - Remedies for Breach of Assignment or Sublease Covenant
  - Use Restrictions
- Recommendation Relating to Uniform Statutory Rule Against Perpetuities (September 1990) (\$18.00)
- Recommendation Relating to Powers of Attorney (November 1990) (\$8.50) includes the following recommendations:
  - Elimination of Seven-Year Limit for Durable Power of Attorney for Health Care
  - Recognition of Agent's Authority Under Statutory Form Power of Attorney
- Recommendation Relating to Probate Law (November 1990) (\$25.00) includes the following recommendations:
  - 1991 Probate Urgency Clean-Up Bill
  - Debts That Are Contingent, Disputed, or Not Due
  - Remedies of Creditor Where Personal Representative Fails to Give Notice
  - Repeal of Civil Code Section 704 (Passage of Ownership of U.S. Bonds on Death)
  - Disposition of Small Estate Without Probate
  - Right of Surviving Spouse to Dispose of Community Property
  - Litigation Involving Decedents
  - Compensation in Guardianship and Conservatorship Proceedings
  - Recognition of Trustees' Powers
  - Access to Decedent's Safe Deposit Box
  - Gifts in View of Impending Death
  - TOD Registration of Vehicles and Certain Other State Registered Property

## VOLUME 21

[Not Yet Available]

- Annual Report for 1991 (\$18.00) includes the following recommendation:
  - Application of Marketable Title Statute to Executory Interests
- Recommendations (November 1991) (\$25.00) includes the following recommendations:
  - Relocation of Powers of Appointment Statute
  - Miscellaneous Creditors' Remedies Matters

Nonprobate Transfers of Community Property  
Notice of Trustees' Fees  
Nonprobate Transfer to Trustee Named in Will  
Preliminary Distribution Without Court Supervision  
Transfer of Conservatorship Property to Trust  
Compensation in Guardianship and Conservatorship Proceedings

## **VOLUME 22**

[Not Yet Available]

Family Code (July 1992) (\$45.00)

Annual Report for 1992 (\$25.00) includes the following recommendations:

Litigation Involving Decedents (Revised)

Standing to Sue for Wrongful Death

Recognition of Agent's Authority Under Statutory Form Power of Attorney  
(Revised)

Special Needs Trust for Disabled Minor or Incompetent Person