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Administration of Estates

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Administration of Estates

Administration of Estates; probate law revisions

Probate Code § 11006 (repealed); §§ 330, 10160.5, 10902, 21300, 21301, 21302, 21303, 21304, 21305, 21306, 21307 (new); §§ 3, 254, 1023, 1200, 1217, 1220, 2100, 2105.5, 2320, 2405, 2501, 2557, 3909, 6112, 6403, 6414, 7050, 7060, 7200, 7622, 8404, 8405, 8406, 8461, 8482, 8483, 8547, 9053, 9154, 9250, 9612, 9620, 10162.3, 10162.5, 10162.7, 10163, 10165, 10452, 10454, 11004, 11641, 11801, 12530, 20114.5 (amended).
AB 156 (Freidman); 1989 STAT. Ch. 21
(Effective July 1, 1989)
Sponsor: California Law Revision Commission
Support: California State Bar Estate Planning, Trust & Probate Law Section
AB 158 (Freidman); 1989 STAT. Ch. 544

Chapters 21 and 544 introduce revisions to the Probate Code in the wake of the major probate law reforms made last year.[1] This analysis summarizes the more significant aspects of these revisions.[2]

DELIVERY OF DECEDENT'S PERSONAL PROPERTY

Under existing law, a successor of a decedent must wait forty days to collect or receive any personal property from the holder of the decedent's property.[3] Chapter 21 permits certain agencies in posses-

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1. *See* 1988 Cal. Stat. ch. 1199, secs. 1-119, at 2933-3030. *See generally* Note, *A.B. 2841 and the Probate Code: Simplifying and Expediting the Administration of Estates in California*, 20 PAC. L.J. 899-929; *Review of Selected California Legislation*, 20 PAC. L.J. 435, 435-440 (summarizing the major enactments of Chapter 1199).

2. *See infra* notes 3-54, and accompanying text. Chapter 21 makes additional amendments to the Probate Code. *See, e.g.*, 1989 Cal Stat. ch. 21, sec. 2, at ____ (amending CAL. PROB. CODE § 254) (the court may determine by a preponderance of the evidence whether a beneficiary feloniously and intentionally killed the decedent in the absence of a final judgement of conviction); *id.* sec. 10, at ____ (a court need not approve the extension, renewal, or modification of a lease from the lessor estate if the rental amount is no greater than $1500 per month).

3. CAL. PROB. CODE § 13100 (West Supp. 1989) (applying only if the value of the decedent's real or personal property does not exceed $60,000).

sion of the decedent's tangible personal property to deliver the property to specified individuals[4] without waiting forty days.[5] Under Chapter 21, the agency delivering the property must confirm the status and identity of the person to whom the property is delivered,[6] and keep a record of the delivery.[7] Delivery of the property by the agency does not constitute a final determination of ownership interests in the property.[8]

Execution of Wills

Under existing law, a presumption exists that, in the absence of two disinterested witnesses to a will, a devise in a will was impermissibly extracted if the devisee is the sole witness testifying to the validity of the devise.[9] Chapter 544 eliminates this presumption if the person testifying to the devise is a devisee only in a fiduciary capacity.[10]

Simultaneous Deaths

Under Chapter 544, if an heir fails to survive a decedent by 120 hours, the heir is considered to have predeceased the decedent for purposes of intestate succession.[11] This provision does not apply if the decedent's property would escheat to the state.[12]

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4. *See* 1989 Cal. Stat. ch. 21, sec. 3, at ____ (enacting Cal. Prob. Code § 330(a)) (individuals specified include the decedent's surviving spouse, relative, or the conservator or guardian of the estate at the time of death).

5. *Id.* A public administrator, government official, law enforcement agency, the hospital where the decedent died, or the decedent's employer need not wait 40 days before releasing tangible personal property. *Id.* Personal property must not be delivered if the deliverer knows or has reason to know that a dispute exists over the right to possess the property. *Id.* (enacting Cal. Prob. Code § 330(b)).

6. *Id.* (enacting Cal. Prob. Code § 330(c)). *See* Cal. Prob. Code § 13104(d) (West Supp. 1989) (listing acceptable forms of identification).

7. 1989 Cal. Stat. ch. 21, sec. 3, at ____ (enacting Cal. Prob. Code § 330(d)). The record must be maintained for three years, and must include the delivery date and information about the person who received the property. *Id.*

8. *Id.* (enacting Cal. Prob. Code § 330(e)). If proceedings are undertaken to determine ownership of the property, the person in possession of the property must deliver the property to the personal representative upon request. *Id.*

9. Cal. Prob. Code § 6112(b) (amended by 1989 Cal. Stat. ch. 544, sec. 4, at ____).

10. 1989 Cal. Stat. ch. 544, sec. 4, at ____ (amending Cal. Prob. Code § 6112). *See Recommendations Relating to Probate Law*, 20 Cal. L. Revision Comm'n Rep. 7, 14-15 (1990) (hereinafter *Recommendations*).

11. 1989 Cal. Stat. ch. 544, sec. 5, at ____ (amending Cal. Prob. Code § 6403(a)). *Compare id. with* Uniform Probate Code § 2-104 (1982) (providing a 120 hour survival requirement for intestate succession). In order to establish succession, clear and convincing

PERSONAL REPRESENTATIVES

Prior law imposed a duty on personal representatives[13] to file an inventory of the assets of the estate with the court within three months of their appointment, and to file an appraisal of the estate within six months of their appointment.[14] Chapter 21 consolidates these deadlines, and requires personal representatives to file an inventory and appraisal of all the assets of the estate within four months of their appointment.[15]

Under existing law, the personal representative's letters of authority must include a notation outlining the representative's powers to sell, exchange, or extend an option to buy real property.[16] Chapter 21 adds that this notation must specify the personal representative's power to borrow money against the property.[17] Chapter 21 provides that the powers enumerated in the notation may be revoked by the court if an interested party can show good cause why the personal representative should not be administering the estate.[18] A court's reversal of the appointment of a personal representative does not void prior transactions that were entered into with a bona fide purchaser.[19]

CREDITORS' CLAIMS

Although existing law requires creditors of the decedent's estate to

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evidence must show that the putative heir survived the decedent by 120 hours. 1989 Cal. Stat. ch. 544, sec. 5, at ____ (amending CAL. PROB. CODE § 6403(a)).

12. *Id.* The 120-hour survival requirement for heirs applies to deaths occurring on or after January 1, 1990. *Id.* (amending CAL. PROB. CODE § 6403(b)).

13. *See* CAL. PROB. CODE § 58 (West Supp. 1989) (definition of personal representative).

14. *Id.* § 8404(c) (amended by 1989 Cal. Stat. ch. 21, sec. 17, at ____).

15. 1989 Cal. Stat. ch. 21, sec. 17, at ____ (amending CAL. PROB. CODE § 8404(c)).

16. *See* CAL. PROB. CODE § 8405(c) (amended by 1989 Cal. Stat. ch. 21, sec. 18, at ___).

17. 1989 Cal. Stat. ch. 21, sec. 18, at ____ (amending CAL PROB. CODE § 8405(c)).

18. 1989 Cal. Stat. ch. 544, sec. 16, at ____ (amending CAL. PROB. CODE § 10454(d)). An interested party may also object to powers requested by the administrator at the hearing, and show good cause why the court should not grant the administrator the requested authority. 1989 Cal. Stat. ch. 21, sec. 25, at ____ (amending CAL. PROB. CODE § 10452).

19. 1989 Cal. Stat. ch. 544, sec. 7, at ____ (amending CAL. PROB. CODE § 8406). Chapter 544 also changes the order of preference for the appointment of administrators by adding the issue of brothers and sisters, other issue of predeceased spouse, and parents of predeceased spouse to the order of preference for appointment as administrator. *Id.* sec. 8, at ____ (amending CAL. PROB. CODE § 8461). The following is the order of preference for the personal representative of a decedent's estate: (1) The surviving spouse; (2) children; (3) grandchildren; (4) other issue; (5) parents; (6) brothers and sisters; (7) issue of brothers and sisters; (8) grandparents; (9) issue of grandparents; (10) children of a predeceased spouse; (11) other issue

file claims in a standard form,[20] Chapter 21 permits the personal representative to waive this requirement, and treat a written demand by a creditor as a properly filed claim.[21] A personal representative may not reject a claim if the representative earlier had elected to treat the creditor's written demand for payment as a properly filed claim.[22] The court may order the personal representative to file an account showing the financial condition and liabilities of the decedent's estate.[23]

Under prior law, personal representatives and their attorneys were required to give notice of the administration of the estate to known creditors within four months of the representative's appointment.[24] Chapter 544 limits this duty by imposing it only on personal representatives.[25] Chapter 544 also sets criteria for attaching liability to a personal representative for failure to give notice to the creditor.[26]

COMPENSATION OF AGENTS AND BROKERS

Under existing law, an estate owes an agent or broker compensation for the sale of real property if a court confirms the sale and the sale is consummated.[27] Chapter 544 provides that an estate does not owe

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of a predeceased spouse; (12) other next of kin; (13) parents of a predeceased spouse; (14) issue of parents of a predeceased spouse; (15) conservator or guardian of the estate acting in that role at the time of death; (16) public administrator; (17) creditors; and (18) any other person. *Id.*

20. *See* CAL. PROB. CODE § 9153 (West Supp. 1989) (describing claim form requirements).

21. 1989 Cal. Stat. ch. 21, sec. 21, at ____ (amending CAL. PROB. CODE § 9154(a)). The doctrines of waiver, estoppel, laches, detrimental reliance, or other equitable principles, may apply. *Id.* (amending CAL. PROB. CODE § 9154(b)).

22. *Id.* sec. 22, at ____ (amending CAL. PROB. CODE § 9250(e)).

23. *Id.* sec. 26, at ____ (amending CAL. PROB. CODE § 10902). The court may decide, on its own motion or at the behest of an interested party, to order an account to be filed. CAL. PROB. CODE § 10950 (West Supp. 1989).

24. 1987 Cal. Stat. ch. 923, sec. 93, at 840 (enacting CAL. PROB. CODE § 9053) (amended by 1989 Cal. Stat. ch. 544, sec. 9.5, at ____). *See* CAL. PROB. CODE § 1215 (West Supp. 1989) (describing the necessary form of notice for creditors and others).

25. 1989 Cal. Stat. ch. 544, sec. 9.5, at ____ (amending CAL. PROB. CODE § 9053(b)).

26. *Id.* To establish liability, a creditor must prove that: (1) The failure to give notice was in bad faith; (2) neither the creditor or the creditor's attorney had actual notice of the administration and final distribution of the estate; and (3) within 16 months after letters were issued to the personal representative, the creditor filed a petition with the court administering the estate seeking an order to establish the personal representative's liability, and that notice of the hearing was given to the personal representative at least 30 days before the hearing. *Id.* The liability of a personal representative does not affect the liability of the estate for the amount of the creditor's claim. *Id.* (amending CAL. PROB. CODE § 9053(b)). *See Recommendations, supra* note 10, at 174-175 (stating that the person seeking to attach liability to the personal representative has the burden of proving bad faith by the personal representative).

27. CAL. PROB. CODE § 10160 (West Supp. 1989).

an agent or broker any commission if the agent or broker directly or indirectly purchased the property or represented a purchaser in whom the agent or broker had an interest.[28]

Existing law entitles agents and brokers to compensation[29] on the full amount of a confirmed sale if they meet specified criteria and the court confirms the sale on the bid submitted to the court.[30] Under Chapter 544, brokers and agents also will receive compensation on the full amount if the specified criteria are met and the court confirms the sale on an increased bid submitted to the court.[31]

Under existing law, agents and brokers granted an exclusive right to sell property (exclusive agents and brokers)[32] are entitled to compensation based on the full amount of the confirmed sale if the purchaser is not represented by another agent or broker and the court confirms the bid.[33] Chapter 544 also permits compensation based on the full amount of the confirmed sale if the exclusive agent or broker represents the purchaser and the court confirms an increased bid made during the confirmation hearing.[34]

Existing law limits exclusive agents or brokers to compensation based on the amount of the original bid, rather than on the amount of the confirmed sale, if the sale was confirmed on an increased bid made by a purchaser who was not represented by any agent or broker, nor procured by a bona fide agent or broker.[35] Under Chapter

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28. 1989 Cal. Stat. ch. 544, sec. 10, at ____ (enacting CAL. PROB. CODE § 10160.5).

29. *See* CAL. PROB. CODE § 10161 (West Supp. 1989) (determining the amount of compensation owed to an agent or broker and the right to receive compensation).

30. *Id.* § 10162.3(a)(3) (amended by 1989 Cal. Stat. ch. 544, sec. 11, at ____). Under existing law, an agent or broker is eligible for compensation on the full amount if: (1) No other agent or broker holds an exclusive right to sell the property; (2) the agent or broker submits the purchaser's bid to the court for confirmation; and (3) the court confirms the sale on the bid submitted. *Id.*

31. 1989 Cal. Stat. ch. 544, sec. 11, at ____ (amending CAL. PROB. CODE § 10162.3) (determining eligibility for full compensation if the court confirms the sale on either the bid submitted or on an increased bid made at the confirmation hearing). The full amount of compensation is paid to brokers or agents if: (1) The agent or broker holds an exclusive contract to sell the property and procures a purchaser who submits an increased bid that is confirmed by the court; or (2) no agent or broker holds an exclusive contract to sell the property and the court confirms the sale to a purchaser procured by a bona fide agent or broker. *Id.* sec. 14, at ____ (amending CAL. PROB. CODE § 10163).

32. *See* CAL. PROB. CODE § 10150(c) (explaining the responsibilities and duties of a contract granting an agent or broker an exclusive right to sell real property).

33. *Id.* § 10162.5(a) (amended by 1989 Cal. Stat. ch. 544, sec. 12, at ____).

34. 1989 Cal. Stat. ch. 544, sec. 12, at ____ (amending CAL. PROB. CODE § 10162.5). *See id.* sec. 15, at ____ (amending CAL. PROB. CODE § 10165(a)(2)) (agent or broker holding contract granting exclusive right to sell property may receive full amount of compensation if purchaser is not represented by another agent or broker).

35. CAL. PROB. CODE § 10162.5(b) (amended by 1989 Cal. Stat. ch. 544, sec. 12, at ____). The increased bid must be made at the confirmation hearing. *Id.*

544, exclusive agents or brokers will receive compensation based on the original bid if the sale was confirmed on an increased bid made by a purchaser who is not represented by the exclusive agent or broker, nor procured by a bona fide agent or broker.[36]

Under existing law, a court must divide compensation for the sale of property between agents or brokers if the bid confirmed by the court is not submitted by the exclusive agent or broker, but rather by a purchaser procured by another agent or broker.[37] Chapter 544 entitles the exclusive agent or broker to a share of the compensation attributable to the original bid, but not to a share of the compensation attributable to the submission of an increased bid.[38]

No Contest Clauses

Existing case law permits a will to incorporate a no contest clause[39] to prevent a beneficiary from challenging the will.[40] Chapter 544 codifies the validity of no contest clauses which penalize the beneficiary of an instrument[41] for bringing a contest[42] prohibited by the clause.[43] The provisions of Chapter 544 regarding no contest clauses

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36. 1989 Cal. Stat. ch. 544, sec. 12, at ____ (amending CAL. PROB. CODE § 10162.5) (the increased bid must be made at the confirmation hearing).

37. CAL. PROB. CODE § 10162.7 (amended by 1989 Cal. Stat. ch. 544, sec. 13, at ____).

38. 1989 Cal. Stat. ch. 544, sec. 13, at ____ (amending CAL. PROB. CODE § 10162.7(b)). *See id.* sec. 15, at ____ (amending CAL. PROB. CODE § 10165(c)(4), (5)) (entitling the agent or broker procuring the purchaser to the full amount of compensation on an increased bid, and splitting compensation on an original bid if another agent or broker holds a contract granting an exclusive right to sell the property).

39. A no contest clause penalizes a beneficiary under the instrument for bringing a challenge against any of the provisions contained in the instrument. 1989 Cal. Stat. ch. 544, sec. 19, at ____ (enacting CAL. PROB. CODE § 21300(b)).

40. *See, e.g.*, In re Goyette's Estate, 258 Cal. App. 2d. 768, 772, 66 Cal. Rptr. 103, 105 (1968) (an in terrorem clause is not against public policy); Estate of Hite, 155 Cal. 436, 439-441, 101 P. 443, 444-445 (1909) (no contest clause does not violate public policy). The provisions of Chapter 544 relating to no contest clauses are not intended to represent a complete codification of the use of no contest clauses. 1989 Cal. Stat. ch. 544, sec. 19, at ____ (enacting CAL. PROB. CODE § 21301). *See Recommendations, supra* note 10, at 16 (common law must meet evolving rules to interpret no contest clauses).

41. The no contest clause provisions of Chapter 544 apply to trusts and donative transfers as well as wills. *See Recommendations, supra* note 10, at 16.

42. 1989 Cal. Stat. ch. 544, sec. 19, at ____ (enacting CAL. PROB. CODE § 21300(b)) (definition of contest).

43. *Id.* (enacting CAL. PROB. CODE § 21303). Chapter 544 instructs courts to strictly construe the transferor's intent behind the use of a no contest clause. *Id.* (enacting CAL. PROB. CODE § 21304). This provision resolves a case law conflict over the construction of no contest clauses when determining the intent of the transferor. *Compare* Estate of Kazian, 59 Cal. App. 3d 797, 802, 130 Cal. Rptr. 908, 910 (1976) (holding that a husband filing proceeding to establish community property interest violated no contest clause) *with* Estate of Black, 160 Cal. App. 3d 582, 588-92, 206 Cal. Rptr. 663, 666-669 (1984) (narrowly interpreting no contest

apply in spite of any contrary provisions in the instrument.[44] A no contest clause cannot be invoked against a beneficiary petitioning the court to determine whether a contest would violate the clause.[45] Under Chapter 544, allegations of forgery or revocation will not trigger a no contest clause;[46] nor will the clause be triggered if a beneficiary with probable cause contests a provision that benefits a person who witnessed, drafted, or transcribed the instrument, or who gave directions regarding the substantive content of the instrument to the transferor, or directed the transferor to include the no contest clause.[47]

BOND REQUIREMENTS

Existing law requires guardians and conservators to give a bond to ensure faithful service.[48] Chapter 544 adjusts sufficient bond requirements for guardians and conservators to reflect the probable annual gross income received by wards or conservatees from public entitlements.[49]

Existing law requires a personal representative to give a bond before securing letters to administer the estate.[50] Chapter 544 authorizes the court to set a fixed minimum bond for the personal

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clause to determine that community property claim brought by domestic partner did not violate no contest provision). *See Recommendations, supra* note 10, at 17 (Chapter 544 is intended to resolve case law conflict to favor strict construction of the no contest clause).

44. 1989 Cal. Stat. ch. 544, sec. 19, at ____ (enacting CAL. PROB. CODE § 21302).

45. *Id.* (enacting CAL. PROB. CODE § 21305). This provision resolves a case law conflict over whether proceedings for declaratory relief will violate a no contest clause. *Compare* Brown v. Superior Court, 34 Cal. 2d 559, 562-565 212 P.2d 878, 880-882 (1949) (petition for declaratory relief does not violate no contest clause) *with* Estate of Denman, 94 Cal. App. 3d 289, 292-294, 156 Cal. Rptr. 341, 342-343 (1979) (request of court to construe community property petition held to be a contest). *See Recommendations, supra* note 10, at 17-18 (commenting on California Probate Code section 21305).

46. 1989 Cal. Stat. ch. 544, sec. 19, at ____ (enacting CAL. PROB. CODE § 21306). *See* Estate of Lewy, 39 Cal. App. 3d 729, 735-736, 113 Cal. Rptr. 674, 677-678 (1974) (alleging that no contest clause was a forgery and therefore unenforceable). *See also Recommendations, supra* note 10, at 18 (other acts may be held exempt from enforcement of no contest clauses).

47. 1989 Cal. Stat. ch. 544, sec. 19, at ____ (enacting CAL. PROB. CODE § 21307). *See Recommendations, supra* note 10, at 18-19 (commenting on California Probate Code section 21307).

48. CAL. PROB. CODE § 2320(a)(1) (West 1989).

49. 1989 Cal. Stat. ch. 544, sec. 1, at ____ (amending CAL. PROB. CODE § 2320(a)(2)(C)(i)-(iii)). Public entitlements include: (1) State income, medical, and child care assistance and county assistance; (2) Federal Social Security and Supplemental Security Income payments; and (3) any other public entitlements to the ward or conservatee. *Id.*

50. CAL. PROB. CODE § 8480 (West Supp. 1989).

representative if an admitted surety insurer[51] guarantees the bond.[52]

Under prior law, if an independent administration of real property had been granted, the bond had to reflect the estimated net proceeds from any authorized sale of the property.[53] Chapter 544 instead requires the bond to reflect the estimated value of the decedent's interest in the property.[54]

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51. *See* CAL. CIV. PROC. CODE § 995.120 (West Supp. 1989) (definition of admitted surety insurer).

52. 1989 Cal. Stat. ch. 21, sec. 19, at ____ (amending CAL. PROB. CODE § 8482(b)) (a fixed minimum amount set by the court is based on the minimum premium required by the admitted surety insurer).

53. CAL. PROB. CODE § 8482(a)(3) (amended by 1989 Cal. Stat. ch. 21, sec. 19, at ____).

54. 1989 Cal. Stat. ch. 21, sec. 19, at ____ (amending CAL. PROB. CODE § 8482(a)). The bond should also reflect, but not exceed, the estimated value of personal property and the probable annual gross income of the estate. *Id.*