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# Administration of Estates

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# Administration of Estates

## Administration of Estates; creditors

Civil Procedure Code § 353.5 (repealed); § 353 (amended);  
Probate Code § 9392 (new and repealed); §§ 551, 6611,  
7664, 9050, 9051, 9052, 9100, 9103, 9201, 9391, 11429,  
13109, 13156, 13204, 13554 (amended).  
SB 1855 (Beverly); 1990 STAT. Ch. 140  
(*Effective July 1, 1991*)

In 1990, the legislature repealed and re-enacted the California Probate Code.<sup>1</sup> Chapter 140 revises provisions of the newly-enacted Probate Code.<sup>2</sup>

### STATUTE OF LIMITATIONS

Under existing law, if a person against whom an action may be brought dies prior to the expiration of the applicable statute of limitations period, the limitations period is suspended.<sup>3</sup> Existing law permits an action to be commenced within specified time limits<sup>4</sup> against a decedent's personal representative.<sup>5</sup> Chapter 140 applies the decedent's statute of limitations periods to specified

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1. See 1990 Cal. Stat. ch. 79, secs. 13, 14, at \_\_\_\_ (repealing and enacting CAL. PROBATE CODE). See also 22 PAC. L.J. at \_\_\_\_ (1991) (review of the significant revisions made by Chapter 79).

2. See 1990 Cal. Stat. ch. 140, secs. 3.1-18.1, at \_\_\_\_ (amending CAL. PROB. CODE §§ 551, 6611, 7664, 9050, 9051, 9052, 9100, 9103, 9201, 9391, 11429, 13109, 13156, 13204, 13554).

3. CAL. CIV. PROC. CODE § 353 (amended by Chapter 140). See *Von Gibson v. Lynch*, 197 Cal. App. 3d 725, 730, 243 Cal. Rptr. 50, 53 (1988) (holding that section 353 of the California Civil Procedure Code suspends the statute of limitations period for actions against the executor or the administrator of the estate of a decedent on survivable causes of action). See also *Delgado v. Estate of Espinoza*, 205 Cal. App. 3d 261, 266 252 Cal. Rptr. 186, 189 (1988) (ruling that when defendant died in an accident that injured plaintiff, the applicable statute of limitations was California Civil Procedure Code section 353).

4. See CAL. CIV. PROC. CODE § 353(c)-(d) (amended by Chapter 140). For persons who died before Jan. 1, 1991, specified time limits are prescribed. *Id.* For all other persons, an action must be brought within one year after the decedent's death. *Id.* § 353(b) (amended by Chapter 140). Cf. UNIF. PROB. CODE § 3-803 (1989) (one year limitations period for all claims arising before the decedent's death, except where the creditor is given actual notice to present a claim).

5. CAL. CIV. CODE § 353(b)-(d) (amended by Chapter 140).

actions brought to recover unsecured debts of a decedent,<sup>6</sup> but excludes any application of the decedent's statute of limitations periods to litigation involving liability of a decedent where the decedent was covered by insurance.<sup>7</sup>

## CREDITORS' CLAIMS

Existing law requires a personal representative who knows of any creditor of a decedent to provide the creditor with actual notice of the administration of the estate.<sup>8</sup> Under existing law, a creditor must file a claim<sup>9</sup> within four months after the date that letters are issued.<sup>10</sup> Chapter 140 allows creditors to file late claims regardless of the type of claim.<sup>11</sup>

## DISTRIBUTEES' LIABILITY TO DECEDENT'S CREDITORS

Chapter 140 specifies that under certain conditions, a person to whom property is distributed is personally liable for a claim of a

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6. CAL. PROB. CODE §§ 6611, 7664, 13109, 13156, 13204, 13544 (amended by Chapter 140). The statute of limitations periods apply to actions to collect unsecured debts of a decedent pursuant to the administration provisions of the California Probate Code. *Id.*

7. *Id.* § 551 (amended by Chapter 140). Actions involving liability where the decedent is covered by insurance may be brought within one year after expiration of the applicable statute of limitations period. *Id.* Section 353 of the California Civil Procedure Code is also inapplicable to any litigation brought by a mortgage or lien holder. *Id.* § 9391 (amended by Chapter 140). *Cf.* UNIF. PROB. CODE § 3-803(d) (1989) (one year limitations period inapplicable to proceedings to enforce mortgages or to any proceeding to establish a decedent's liability where the decedent is protected by liability insurance).

8. CAL. PROB. CODE § 9050 (amended by Chapter 140). If the personal representative learns of the claim after four months have passed from the date that letters are issued, Chapter 140 requires the notice to be given within 30 days from the personal representative's knowledge of the existence of the creditor. *Id.* § 9051(c) (amended by Chapter 140). *See id.* § 52 (enacted by Chapter 79) (definition of letters). *See also id.* § 9052 (amended by Chapter 140) (form for notice to creditors). *Cf.* UNIF. PROB. CODE § 3-801 (1989) (personal representative may give written notice to creditor to present claim).

9. CAL. PROB. CODE § 9000 (enacted by Chapter 79) (definition of claim).

10. *Id.* § 9100(a)(1) (amended by Chapter 140). Creditors with nonbusiness claims may file a late claim. *Id.* § 9103(2)(b) (amended by Chapter 140).

11. *Id.* § 9103 (amended by Chapter 140). The claim must be brought prior to the court's order for final distribution of the estate or within one year after the issuance of letters, whichever is earlier. *Id.* § 9103(b)(1)-(2) (amended by Chapter 140). Additionally, if the claim is barred by California Civil Procedure Code section 353, the claim may not be brought. *Id.* § 9103(b)(2) (amended by Chapter 140).

creditor.<sup>12</sup> Under Chapter 140, each distributee is liable to any creditor that is not paid at the time that the accounts of the personal representative have been settled.<sup>13</sup> The liability of each distributee is limited to each distributee's proportionate share of the distributed estate.<sup>14</sup>

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12. CAL. PROB. CODE § 9392(a) (enacted by Chapter 140). The claim does not have to be filed in order for liability to attach as long as: (1) The identity of the creditor is known to the personal representative within four months after letters were issued; (2) notice of administration of the estate was not given to the creditor and the creditor did not have actual notice of the administration of the estate before the order for final distribution; and (3) the statute of limitations applicable to the claim has not expired. *Id.*

13. *Id.* § 9392 (enacted by Chapter 140). See *Revised and Supplemental Comments for the New Probate Code*, 20 CAL. L. REVISION COMM'N 2001, 2100-01 (§ 9392 enacted to implement the rule of *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988)). See also *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 491 (1988) (holding that if a creditor is known or reasonably ascertainable but is not given actual notice, the due process clause of the fourteenth amendment prohibits the creditor's claim from being cut off by a short claim filing requirement). See generally *Recommendation Relating to Notice to Creditors in Probate Proceedings*, 20 CAL. L. REVISION COMM'N REP. 511-13 (1990) (discussion of requirement of actual notice to known creditors pursuant to *Tulsa*); Comment, *Tulsa Professional Collection Services v. Pope: New Due Process Requirements for Decedent's Creditors - Adios Publication Notice*, 34 S.D.L. REV. 359 (1989), Davis, *Constitutional Law--Fourteenth Amendment Right to Due Process--Notice to Estate Creditors Under State Nonclaim Statutes*, 56 TENN. L. REV. 465 (1989) (articles discussing *Tulsa* and the due process clause claims of creditors).

14. CAL. PROB. CODE § 9392(3)(b) (enacted by Chapter 140). Cf. UNIF. PROB. CODE § 3-1006 (1989) (creditor claims are barred from being brought against distributee one year after the decedent's death).

## Administration of Estates; probate code

Civil Code §§ 683, 954 (amended); Financial Code §§ 852, 952, 6661, 6800, 6804, 6855, 14854, 14860, 18318.5 (amended); Health and Safety Code § 8751.1 (amended); Probate Code §§ 1-21540 (repealed and new).

AB 759 (Friedman); 1990 STAT. Ch. 79

Source: California Law Revision Commission

Chapter 79 repeals and reenacts the California Probate Code.<sup>1</sup> Under prior law, the general Probate Code definitions of terms did not apply to guardianship and conservatorship proceedings or to non-probate transfers.<sup>2</sup> Under Chapter 79, the general definitions of terms apply to the entire Probate Code.<sup>3</sup>

Under the prior Probate Code, many provisions applied inconsistent protections to third persons who acted in good faith and for valuable consideration.<sup>4</sup> Chapter 79 enacts provisions applicable to the entire Probate Code to broadly protect third persons who act in good faith.<sup>5</sup>

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1. See CAL. PROB. CODE §§ 1-21541 (repealed and re-enacted by Chapter 79). See also *Recommendation Proposing New Probate Code*, 20 CAL. L. REVISION COMM'N REP. 1001, 1035 (1989) [hereinafter *Recommendation*] (new California Probate Code follows the same sections as the prior code but omits obsolete material and makes numerous clarifying and minor substantive changes to the prior code).

2. 1988 Cal. Legis. Serv. ch. 1199, sec. 25, at 2945 (West) (amending CAL. PROB. CODE § 20) (repealed and re-enacted by Chapter 79).

3. CAL. PROB. CODE §§ 20-88 (enacted by Chapter 79). See also *Recommendation*, *supra* note 1, at 1036 (recommending application of general definitions to the entire code).

4. See 1988 Cal. Legis. Serv. ch. 1199, sec. 91.5, at 3009 (West) (enacting CAL. PROB. CODE § 11750) (repealed and re-enacted by Chapter 79) (distribution of property is valid as to a good faith purchaser); 1979 Cal. Stat. ch. 726, sec. 3, at 2335 (enacting CAL. PROB. CODE § 1875) (repealed and re-enacted by Chapter 79) (protecting a good faith purchaser or encumbrancer of real property from a conservatee without knowledge of conservatorship, even though a conservatee, pursuant to California Probate Code section 1872, lacked the capacity to bind a conservatorship estate); 1988 Cal. Legis. Serv. ch. 113, sec. 15.7, at 392 (West) (enacting CAL. PROB. CODE § 13106.5) (repealed and re-enacted by Chapter 79) (a good faith lessee of real property from an obligor may rely upon a recorded reconveyance of a trustee under a deed of trust).

5. CAL. PROB. CODE §§ 1875, 3074, 11750, 13106.5, 13203, 18103, 18104 (enacted by Chapter 79). See also *Recommendation*, *supra* note 1, at 1036 (recommending application of "third party acting in good faith and for valuable consideration" to entire code).

Under prior law, a trustee was not personally liable for a contract properly entered into during the course of the administration of a trust.<sup>6</sup> Chapter 79 enacts similar liability protection provisions for personal representatives and for guardians and conservators.<sup>7</sup> After the death of a ward or a conservatee, prior law permitted a guardian or conservator to seek an order to liquidate an estate without probate if the value of the estate was less than \$10,000.<sup>8</sup> Chapter 79 raises the liquidation limit to \$60,000.<sup>9</sup>

Prior law granted all powers specified in a will to a guardian nominated by the will.<sup>10</sup> Chapter 79 grants all powers specified in any instrument to a guardian nominated by that instrument.<sup>11</sup> Under Chapter 79, provisions in the Probate Code relating to health care are subject to a valid and effective power of attorney.<sup>12</sup>

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6. 1986 Cal. Legis. Serv. ch. 820, sec. 40, at 2796 (West) (enacting CAL. PROB. CODE § 18000) (repealed and re-enacted by Chapter 79). Personal liability arose only if a trustee failed to reveal the trustee's capacity or to identify the trust in a contract. *Id.*

7. CAL. PROB. CODE §§ 2110, 9606 (enacted by Chapter 79). *See also Recommendation, supra* note 1, at 1037 (recommending protection of personal representatives and guardians and conservators).

8. 1987 Cal. Legis. Serv. ch. 923, sec. 83, at 834 (West) (amending CAL. PROB. CODE § 2631) (repealed and re-enacted by Chapter 79).

9. CAL. PROB. CODE § 2361 (enacted by Chapter 79). *See also Recommendation, supra* note 1, at 1040 (recommending increasing liquidation limit to \$60,000 because \$10,000 limit became obsolete once Probate Code section 13100 authorized collection or transfer of decedent's estate without the need for probate if the estate value was less than \$60,000).

10. 1979 Cal. Legis. Serv. Ch. 726, sec. 3, at 2335 (West) (enacting CAL. PROB. CODE § 2108) (repealed and re-enacted by Chapter 79).

11. CAL. PROB. CODE § 2108 (enacted by Chapter 79). *See also Recommendation, supra* note 1, at 1039 (recommending guardian's powers be specified by any instrument).

12. *Id.* § 2356(e)(2) (enacted by Chapter 79). *See also Recommendation, supra* note 1, at 1039 (recommending power of attorney for health care provisions).

## Administration of Estates; probate law

Probate Code §§ 10404.5, 10565, 10585.5, 17102 (repealed); §§ 1212, 6111.5, 6211, 8469, 10168, 10810 (new); §§ 37, 221, 230, 554, 900, 1215, 1220, 2333, 2356, 2357, 2501, 2555, 3208, 6111, 6247, 6522, 7662, 7666, 8461, 8547, 9390, 9832, 9941, 10406, 10501, 10830, 10831, 10850, 10900, 10954, 11000, 11623, 12205, 15003, 17001 (amended).

SB 1775 (Lockyer); 1990 STAT. Ch. 710

Source: California Law Revision Commission

Existing law requires a potential beneficiary<sup>1</sup> to survive the decedent by at least 120 hours in order to take by intestate succession from the decedent.<sup>2</sup> Chapter 710 requires the beneficiary under a statutory will<sup>3</sup> to outlive the testator<sup>4</sup> by at least 120 hours.<sup>5</sup>

Prior law permitted a personal representative,<sup>6</sup> guardian, or conservator to execute, renew, or modify a real property lease without court authorization, if the monthly rental provided for in

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1. See CAL. PROB. CODE § 24(a) (enacted by 1990 Cal. Stat. Chapter 79) (definition of beneficiary of an intestate succession).

2. *Id.* § 6403(a) (amended by Chapter 710). See generally *Recommendation Relating to 120-Hour Survival Requirement*, 20 CAL. L. REVISION COMM'N REP. 21, 29 (1990). The policies behind the five day waiting period are to dispose of decedent's property properly, to minimize litigation over the time of death, and to provide a survival time that is long enough to recognize most deaths that occur after an accident, but short enough to prevent interference with administration of the estate. *Id.*

3. See CAL. PROB. CODE §§ 6200-6248 (enacted by 1990 Cal. Stat. Chapter 79) (amended by Chapter 710) (description of statutory will).

4. See *id.* § 6201 (enacted by Chapter 79) (definition of testator of a statutory will).

5. *Id.* § 6211 (amended by Chapter 710). See generally *Recommendation Relating to Survival Requirement for Beneficiary of Statutory Will*, 20 CAL. L. REVISION COMM'N REP. 549, 553 (1990) (since intestate succession is treated as a statutory will for persons that have failed to execute their own wills, a 120 hour survival requirement should also apply to an executed statutory will).

6. See CAL. PROB. CODE § 58 (enacted by 1990 Cal. Stat. Chapter 79) (definition of personal representative).

the lease did not exceed \$1,500.<sup>7</sup> Chapter 710 increases the maximum monthly rental allowed to \$5,000.<sup>8</sup>

Absent an express provision for compensation in a decedent's will, existing law provides a statutory fee schedule for the compensation of a personal representative or special administrator.<sup>9</sup> Chapter 710 authorizes an attorney for a personal representative, as compensation for conducting probate proceedings, to receive the same statutory compensation as allowed for the personal representative.<sup>10</sup>

Existing law requires all actions against sureties on the bond for a guardian or conservator<sup>11</sup> to be brought within four years from either the date of discharge or removal of the guardian or conservator or from the date that the order surcharging the guardian

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7. 1990 Cal. Stat. ch. 79, sec. 14, at \_\_\_ (enacting CAL. PROB. CODE § 9832(b)(1)) (amended by Ch. 710) (personal representative provision); *id.* at \_\_\_ (enacting CAL. PROB. CODE § 2501(b)(1)) (amended by Chapter 710) (guardian or conservator provision); *id.* at \_\_\_ (enacting CAL. PROB. CODE § 2555(a)) (amended by Chapter 710) (guardian or conservator provision).

8. CAL. PROB. CODE §§ 9832 (amended by Chapter 710) (personal representative provision); 2501(b)(1) (amended by Chapter 710) (guardian or conservator provision); 2555(a) (amended by Chapter 710) (guardian or conservator provision). *See generally Recommendation Relating to Execution or Modification of Lease Without Court Order*, 20 CAL. L. REVISION COMM'N REP. 557, 561 (1990) (increasing the maximum for independent fiduciary action will avoid the need to obtain court authorization for routine lease transactions).

9. CAL. PROB. CODE § 10800 (enacted by 1990 Cal. Stat. Chapter 79). *See id.* §§ 10801 (enacted by 1990 Cal. Stat. Chapter 79) (the court may allow additional compensation for extraordinary services); 10802(a) (enacted by 1990 Cal. Stat. Chapter 79) (if the decedent's will provides for personal representative's compensation, the will takes precedent over statutory compensation); 10802(b) (enacted by Cal. Stat. Chapter 79) (personal representative may petition the court to be relieved of decedent's enumerated compensation). *See also id.* § 8540 (enacted by 1990 Cal. Stat. Chapter 79) (use of special administrator occurs where the circumstances of the estate require immediate appointment to preserve the estate). *See generally* Estate of Van Every, 67 Cal. App. 2d 164, 166, 153 P.2d 614, 615 (1944) (California Probate Code section 10802(a) permits a personal representative to receive an amount greater than the statutory compensation if the decedent's will provides for a greater amount).

10. CAL. PROB. CODE § 10810 (enacted by Chapter 710). *See id.* § 10830 (amended by Chapter 710) (either the personal representative or the attorney for the personal representative may request an allowance on the compensation for the personal representative). *See also id.* § 10804 (enacted by 1990 Cal. Stat. Chapter 79) (a personal representative that is an attorney may receive the personal representative's compensation and compensation for services as estate attorney only if expressly authorized by the decedent's will or by court order); Estate of Thompson, 50 Cal. 2d 613, 615, 328 P.2d 1, 2 (1958) (dual compensation may be paid if expressly authorized by will).

11. *See* CAL. PROB. CODE § 2320(a) (enacted by 1990 Cal. Stat. Chapter 79) (every person appointed as guardian or conservator must give a bond approved by the court).

or conservator becomes final, whichever is later.<sup>12</sup> Where the person entitled to bring an action was under a legal disability, prior law permitted an action to be brought within four years after the removal of the disability.<sup>13</sup> Chapter 710 removes the limitations period on bringing an action after a legal disability.<sup>14</sup>

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## Administration of Estates; unclaimed monies

Probate Code § 7663 (amended).  
SB 1774 (Lockyer); 1990 STAT. Ch. 324  
(Effective July 16, 1990)

Existing law requires a county public administrator<sup>1</sup> to administer estate money pursuant to a specified priority.<sup>2</sup> The public administrator is required to distribute any remaining property<sup>3</sup> to a decedent's beneficiaries,<sup>4</sup> and if there are no beneficiaries, to the county treasurer for use in the general fund of

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12. *Id.* § 2333(c) (amended by Chapter 710).

13. 1990 Cal. Stat. ch. 79, sec. 14, at \_\_\_ (enacting CAL. PROB. CODE § 2333(c)) (amended by Chapter 710).

14. CAL. PROB. CODE § 2333 (amended by Chapter 710). *Cf. id.* § 3488 (enacted by 1990 Cal. Stat. Chapter 79) (lack of post-disability time limit for a bond given for a personal representative in a decedent's estate). *See Recommendation Relating to Limitation Period for Action Against Surety in Guardianship or Conservatorship Proceeding*, 20 CAL. L. REVISION COMM'N REP. 565, 569 (1990). The removal of any tolling of the limitations period ensured finality of decedents' estates, and finality is equally important in guardianship and conservatorship proceedings. *Id.*

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1. *See* CAL. PROB. CODE §§ 7620-7624 (West Supp. 1990) (appointment of public administrator as personal representative for the administration of an estate).

2. *Id.* § 7662. *See generally Review of Selected 1990 California Legislation--Probate Code* 22 PAC. L.J. \_\_\_ (1990) (general discussion of the significant revisions of the California Probate Code).

3. *See* CAL. PROB. CODE § 62 (West Supp. 1990) (definition of property).

4. *See id.* § 24 (definition of beneficiary).

the county.<sup>5</sup> Chapter 324 requires county treasurers to maintain custody of remaining property for three years.<sup>6</sup>

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5. *Id.* § 7663 (amended by Chapter 324). The public administrator may not make payments to a decedent's beneficiaries until all debts have been paid pursuant to section 7662 of the California Probate Code, and in no circumstances earlier than four months after court authorization has been granted to the public administrator. *Id.* Cf. IDAHO CODE § 14-117 (1989), MICH. COMP. LAWS § 720.220 (1989), MONT. CODE ANN. § 72-14-202 (1989) (similar provisions regarding the deposit of monies with a county treasurer).

6. CAL. PROB. CODE § 7663(b) (amended by Chapter 324). After three years, the property becomes the property of the county if there has been no other claim or complaint made. *Id.* Chapter 324 additionally requires public administrators to give notice to the county controller pursuant to California Code of Civil Procedure section 1311 if an amount deposited with a county treasurer exceeds \$10,000. *Id.* Cf. CAL. GOV'T CODE § 50050 (West Supp. 1990) (allowing the treasurer to place a written notice in a local newspaper regarding the property subsequent to the three year waiting period).