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Administration of Estates

University of the Pacific; McGeorge School of Law

Administration of Estates

Administration of Estates; estates of community property

Code of Civil Procedure §353.5 (amended); Probate Code Article 3 (commencing with §650) (repealed); Article 3 (commencing with §650, §§704.2, 704.4, 713.5 (new); Article 5 (commencing §980) (new); §§202, 203, 204, 205, 910, 1240 (amended).
SB 341 (Song); STATS 1975, Ch 173
(Effective June 30, 1975)
Support: State Bar of California; California Bankers Association; California Land Title Association

Clarifies procedures for determination and confirmation of community property passing without administration at the death of a spouse; establishes personal liability of the surviving spouse for debts of the deceased spouse; provides optional procedures for the surviving spouse to have interests in community property administered.

In 1974 the California Legislature enacted Chapters 11 and 752, thereby changing the procedures for administration of estates which include community property passing to the surviving spouse [CAL. STATS. 1974, c. 11, §2, at ; c. 752, §5, at ; *See* 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 137 (1975)]. The provisions of these chapters originally were to apply to estates of persons dying on or after January 1, 1975, but early in the 1975-76 Regular Session Chapter 1 was enacted to postpone their effective date, thus making them applicable to the estates of persons dying on or after July 1, 1975. Chapter 173 was then enacted in the 1975-76 Regular Session to clarify the administrative procedures of Chapters 11 and 752 of the 1973-74 Regular Session.

Section 202 of the Probate Code provides that when a married couple owns community property and one of them dies intestate, or testate and by will leaves all or a part of his or her interest in the community property to the surviving spouse, such property passes directly to the surviving spouse and no administration of this property is necessary. Prior to the enactment of Chapter 173, Section 202 as amended in 1974 [CAL. STATS. 1974, c. 11, §2, at ; c. 752, §5, at] provided that although the surviving spouse could petition for probate of the will or ad-

ministration of the estate of the deceased spouse, the probate court had jurisdiction only over the decedent's half of the community property, complicating the procedures for disposal of the estate [Kahn & Frimmer, *Management, Probate and Estate Planning Under California New Community Property*, 50 CAL. S.B.J. 42, 61 (1975)]. This potential problem has been resolved by the amendment of Section 202 by Chapter 173 which provides different options for the surviving spouse. At the election of the surviving spouse, personal representative, guardian of the estate, or conservator of the property of the surviving spouse, the interest in community property of either the deceased spouse or of both spouses may be administered. This election must be made within four months after issuance of letters testamentary or administration and also prior to the entry of an order issued pursuant to Section 650 (discussed *infra*) which determines that all property is community property and that no administration is necessary.

Section 204 provides that any property disposed of in trust by the decedent's will and any interest in community property given by will to someone other than the surviving spouse is subject to administration. This section has been amended by Chapter 173 to further provide that any *qualified* interest given the surviving spouse, such as a life estate in community property, is also subject to administration. In addition, Chapter 173 has amended Section 202 to provide that the surviving spouse may elect, at any time prior to the entry of the final distribution decree, to have any or all of his or her interest in community property transferred for administration to a trustee named by the will, or to the trustee of an existing trust identified by the will.

Section 203 of the Probate Code as amended in 1974 provided that after 40 days following the death of a spouse, the *surviving spouse* had the full power to sell, lease, mortgage, or otherwise deal with community real property if the record title to the property was in the name of the surviving spouse or the surviving spouse and someone other than the deceased spouse [CAL. STATS. 1974 c. 11, §3, at ; c. 752, §6, at]. However, if a notice was filed stating that an interest under the will in such property was claimed by someone other than the surviving spouse, no disposition of the property could be made by the surviving spouse. Since no provision was made for property held in the name of the deceased spouse, or the deceased spouse and someone other than the surviving spouse, presumably the surviving spouse had no power to deal with such property immediately. Chapter 173 has amended Section 203 to provide that, in addition to the surviving spouse, the personal

representative of the surviving spouse, guardian of the estate, or conservator of the property of the surviving spouse may deal with the community real property, after waiting the requisite 40 days following the death of the deceased spouse, *regardless* of who held the record title to such property. A further amendment to Section 203 provides that the right, title, and interest of any grantee, purchaser, encumbrancer, or lessee of the real property disposed of by the surviving spouse shall be as free of any rights of the devisees or creditors of the deceased spouse as such right, title, and interest would be if the property had been owned as the separate property of the surviving spouse.

Prior to the enactment of Chapter 173, Section 205 of the Probate Code as amended in 1974 provided that the community property was liable for all valid and enforceable debts existing at the time of the death of the deceased spouse and chargeable against the community property under the provisions of Title 8 (commencing with §5100) of the Civil Code. In addition, Section 205 provided that the surviving spouse was personally liable for any unsecured debts of the deceased spouse to the extent of the value of the deceased spouse's interest in the community property passing to the surviving spouse without administration. Chapter 173 has amended Section 205 of the Probate Code, deleting the language which provided that the community property was liable for debts chargeable against it. This amendment to Section 205 by Chapter 173 has also made the surviving spouse *personally* liable for the debts of the deceased spouse which are chargeable against the community property unless the interests of both spouses in the community property are administered. It would seem, therefore, that upon the death of one spouse the *community property* of the marriage could not be impressed with a lien of an unsecured creditor and could be disposed of more easily.

The personal liability of the surviving spouse is limited to the value of the interest held by the surviving spouse immediately prior to the death of the deceased spouse in the community property which is not exempt from execution, less the amount of any liens or encumbrances on the interest of the surviving spouse in the community property, plus the value of any interest of the deceased spouse passing to the surviving spouse without administration. Any debt of the deceased spouse for which the surviving spouse is liable may be enforced against him or her in the same manner as it could have been enforced against the deceased spouse (§205(c)). However, if the estate of the deceased spouse is administered and notice to creditors has been given by the personal representative of the deceased spouse, actions against the surviving spouse to

enforce the debt are barred to the same extent as claims against the estate of the deceased (§§700-738). An exception is made for actions by creditors who have commenced judicial proceedings for enforcement of the debt and have served the surviving spouse with process before the last publication of notice to creditors, those who file a timely claim in the proceedings, or who have secured a written acknowledgment of liability from the surviving spouse. Furthermore, the surviving spouse may assert all defenses, counterclaims, or setoffs which would have been available to the deceased spouse.

Sections 704.2 and 704.4 have been added to the Probate Code to establish a procedure whereby the surviving spouse may file a claim in probate proceedings against the estate of the deceased spouse for the payment of debts of the deceased spouse for which the surviving spouse is personally liable pursuant to Section 205.

For example, if the deceased spouse disposes of all of his or her portion of the community property by will by giving it to someone other than the surviving spouse, and an unsecured creditor attempts to collect only from the surviving spouse, the surviving spouse may file a claim against the estate to force the creditor to collect from the estate.

A claim made pursuant to Sections 704.2 and 704.4 may be filed whether or not the community property passing to the surviving spouse is administered, but any claim must be filed before the filing of a petition for final distribution. An inventory of both the separate property of the surviving spouse and any community property passing to the surviving spouse without administration and a statement of the value of such property less the amounts of any liens and encumbrances on such property must be included, and the statement may also include an identification of any property which is exempt from execution. The claim will be discharged by either payment to the surviving spouse, payment to the creditors of the surviving or deceased spouse, or by a credit issued to the surviving spouse in an order allocating debts issued pursuant to Section 980 (*infra*) (§713.5).

Procedures for the apportionment of debts between the surviving spouse and the estate of the deceased spouse in any instance where a debt appears to be payable by either the estate of the deceased spouse or by the surviving spouse, have been established by the addition of Article 5 (commencing with §980) to the Probate Code. A petition for an order to allocate the responsibility for debts may be filed by the personal representative of the deceased spouse or any other person interested in the estate, and it must be filed prior to the filing of a petition

for final distribution of the estate. If it appears that the allocation would be affected by the value of any separate property of the surviving spouse or of any community property not administered, the surviving spouse may be ordered by the court to furnish an inventory and valuation of such property or to show cause why such an inventory should not be furnished (§980(c)). The personal representative of the estate and the surviving spouse may agree to an allocation of the debts, subject to court determination that the agreement substantially protects the rights of all interested parties. If no agreement is made, each debt is apportioned against all of the property liable for the debt, and the responsibility for payment of the debt is allocated accordingly (§980(e)). Once the court determines the proper allocation of debts between the estate and the surviving spouse, it must issue an order directing the personal representative of the estate to charge the amounts allocated to the surviving spouse against any property or interest held by the surviving spouse in property in the possession of the personal representative, directing the surviving spouse to pay to the personal representative any amount due in excess of the value of property or interest held by the surviving spouse but in possession of the personal representative, and directing the personal representative to pay the debts allocated to the estate. The right to appeal from an allocation order is specifically given by an amendment to Section 1240. Allocation of debts between the estate of the deceased spouse and the surviving spouse will follow the general rules of family law, on the general theory that he who enjoys the benefit must bear the burden [Letter from David M. Eagleson, Supervising Judge, Probate Department, Superior Court of Los Angeles County to Bion Gregory, August 20, 1975, on file at the Senate Committee on Judiciary].

Article 3 (commencing with §650) as added in 1974 has been repealed, and a new Article 3 (commencing with §650) has been added by Chapter 173 to reformulate the procedures by which a surviving spouse may obtain a judicial decree confirming title to the community property in the surviving spouse. If the surviving spouse has elected to have any interest in the community property administered pursuant to Section 202(b), these procedures are available only for the remaining interests not administered.

To initiate the proceedings, the surviving spouse, the personal representative of the surviving spouse, his or her guardian, or the conservator of the property of the surviving spouse must file a verified petition in the county in which the deceased spouse's estate may be administered, alleging that administration of all or a part of the estate is not necessary

because the property is community property passing or belonging to the surviving spouse (§650). Section 650 further sets forth the necessary contents of the petition. If proceedings for administration of the estate of the deceased spouse are pending, the petition must be filed in those proceedings. If such proceedings are not pending, the petition may be joined with a petition for probate of the will or administration of the estate (§651). Section 652 further provides that the filing of a petition of this type does not preclude the court from ruling favorably on a petition to admit a will of the deceased spouse to probate, or to issue letters testamentary or of administration.

Upon the filing of a petition pursuant to Section 650, the court must appoint an inheritance tax referee who is to appraise the property described in the petition and file within 60 days after receipt of the petition an inheritance tax determination or certification that no inheritance tax is due. The court must then issue an order fixing the tax, but such order may be superseded by a later order if the transfer of any other property becomes subject to taxation (§657). Only after the inheritance tax referee has certified that no taxes are due, or after the inheritance taxes have been paid, or after the State Controller has waived these requirements, may a final order pursuant to Section 650 be issued.

Section 655 of the Probate Code now delineates the types of orders which may be issued by the court at a hearing on petitions filed pursuant to Section 650. For example, where the court finds that all of the property described in the petition is community property passing to the surviving spouse, it must issue an order to that effect which describes the property and confirms that no administration is necessary, and if the petition contained a description of the surviving spouse's interest in the community property prior to the death of the deceased spouse, the court must issue an order confirming the interest of the surviving spouse. However, if the court finds that all or a part of the property is *not* community property passing to the surviving spouse, it must issue an order confirming that no administration is necessary on any part of the property which does pass to the surviving spouse, issue an order confirming the interest of the surviving spouse in any community property which belonged to the surviving spouse prior to the death of the deceased spouse, and issue an order that the remainder of the property is subject to administration (§655).

See Generally:

1) 7 WITKIN, SUMMARY OF CALIFORNIA LAW, *Community Property* §§108-114 (8th ed. 1974) (spouse's rights to community property after death of other spouse).
2) Kahn & Frimmer, *Management, Probate and Estate Planning Under California*

New Community Property, 50 CAL. S.B.J. 42 (1975) (proposals for change in probate proceedings).

3) 6 PAC. L.J., REVIEW OF SELECTED 1974 CALIFORNIA LEGISLATION 137 (1975) (review of Chapters 11 and 752 of 1973-74 Regular Session).

Administration of Estates; disposition of estates by public administrator

Probate Code §1143 (amended).
SB 1206 (Robbins); STATS 1975, Ch 992
Support: California State Public Administrators' and Guardians' Association

Prior to the enactment of Chapter 992, estates which appeared to have a value of $2,000 or less and which were in the hands of the public administrator were subject to the summary disposition procedures of Section 1143 of the Probate Code. Chapter 992 has been enacted to amend Section 1143 to provide that such summary procedures now apply to estates in the hands of the public administrator of a value of $5,000 or less, excluding the value of any motor vehicle owned by the decedent. To dispose of such estates the administrator is authorized to apply to the superior court of his or her county for permission to summarily sell any personal property of the decedent, withdraw from a bank account any money belonging to the decedent, or collect any debt or claim owed to the decedent. Any proceeds from the sale of the property and any money received from such collections are applied to pay the commission of the public administrator, burial costs of the decedent, and costs of his or her last illness. If any balance remains, it is to be used to pay other claims approved by the court. No administration of the estate is necessary unless additional property is discovered, and no notice of the application need be given. Furthermore, the application may be made if there is no will in existence, if there is a will and no executor is named, or if there is a will with a named executor who refuses to act.

Chapter 992 further adds Subdivision (b) to Section 1143 of the Probate Code to provide that when a public administrator takes possession of an estate, and the value of the estate appears to be $500 or less, he or she may proceed with the disposal of the property without application to the court. After selling the personal property of the decedent and collecting any money from bank accounts or funds otherwise owed to the decedent, the public administrator may apply such money toward the burial expenses of the decedent or may deposit such money with the county treasurer for use in the general fund. The application may be

made without regard for any claims against the decedent's estate except certain specified claims including funeral expenses, expenses of last illness, and mortgages [Letter from Richard F. Charvat, Deputy County Counsel of Los Angeles, to the *Pacific Law Journal*, July 15, 1975 (on file at the *Pacific Law Journal*)].

See Generally:
1) 7 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§286-288 (8th ed. 1974) (executors and administrators).

Administration of Estates; illegitimate children

Probate Code §§71, 255, 256, 401, 420, 606, 1403, 1431, 1504, 1505 (amended).
SB 1052 (Presley); STATS 1975, Ch 718

Chapter 718 was enacted to implement major substantive changes to the provisions of the Probate Code which set forth the inheritance rights of illegitimate children. The amendments made by Chapter 718 to Probate Code Sections 255, 256, and 1403 were, however, superceded by the later enactment of Chapter 1244 [*See* REVIEW OF SELECTED 1975 CALIFORNIA LEGISLATION, this volume at 411 (Domestic Relations; parent and child relationship)], which also made major changes in the inheritance rights of such children.

Chapter 718 has also amended several provisions of the Probate Code to provide for sexual neutrality in various situations. These changes were *not* affected by the later enactment of Chapter 1244. Section 1431 has been amended to provide that *either* parent, or the parent having custody of a minor if the parents are separated and are living apart, may settle a disputed claim of the minor against a third person for damages or loss of property. Formerly, this power was given to the father but not to the mother of the child, if the father was living and not separated from the mother.

Section 71, dealing with pretermitted heirs, has been amended to provide that if a *person* marries after making a will, and any issue of the maker survives the maker, or is born after the death of the maker, and the issue is not provided for in the will, the will is revoked as to such issue. However, if such issue is provided for in the will or by way of settlement, or a clear intention not to provide for such issue is shown by the will, the will is *not* so revoked. Formerly, Section 71 applied only to issue born after the death of the father; it now also applies to the situation of death of the mother.

Pursuant to the provisions of Section 1504 as amended by Chapter 718, the expenses of a minor for support, maintenance, and education may be defrayed out of the minor's estate if the minor has resources to provide for these expenses to a greater degree than his or her parents. Formerly this section referred to the father only; now the income of both parents will be considered before the minor's estate is used for his or her maintenance. Apparently, the purpose of these provisions is to effect uniformity with other code sections giving parents equal rights and duties [STATE BAR OF CALIFORNIA, 1974 CONFERENCE RESOLUTION 4-5].

Finally, Chapter 718 has amended Section 1505, which provided that the expenses for support and maintenance of a wife who by reason of incompetence has had a guardian appointed for her estate may be charged against her estate if the husband is unable to provide for her suitably. After the amendment of Section 1505 by Chapter 718, *either* spouse, if unable to support an incompetent spouse for whom a guardian has been appointed, may seek court approval to defray the costs of support from the estate of the incompetent spouse.

See Generally:
1) 4 PAC. L.J., REVIEW OF SELECTED 1972 CALIFORNIA LEGISLATION 427 (1973) (no priority between parents in guardianship proceedings).

Administration of Estates; testamentary trusts—deceased or absconding trustee

Probate Code §1120 (amended).
AB 1183 (Chel); STATS 1975, Ch 468
Support: State Bar of California

The trustee of a testamentary trust *may*, from time to time, or at the termination of the trust, report his or her acts as trustee, or render accounts for settlement, before the superior court in the county in which the will was probated [CAL. PROB. CODE §1120]. The trustee may also be *compelled* by the court to do so after an application by any beneficiary of the trust [CAL. PROB. CODE §1120]. Prior to the enactment of Chapter 468, in the event of the trustee's death, only the legal representatives of the trustee were empowered to present this accounting [CAL. STATS. 1967, c. 1219, §1, at 2980]. Chapter 468 has amended Section 1120 of the Probate Code to provide that if a trustee dies or becomes incompetent, the report and accounting are to be presented by his or her administrator, guardian, or conservator, if one exists. However, if none has been appointed or if the trustee has absconded, the court may

compel the attorney for the trustee to present the report and accounting to the extent that the attorney has information or records available to him or her for that purpose. The account of the attorney need not be verified, and he or she must be allowed a fee by the court.

The amendments to Section 1120 made by Chapter 468 bring the procedures in the instance of the trustee's death, incompetence, or flight, virtually into conformity with the provisions of Sections 932, 1555, and 1907 of the Probate Code, which deal with presentations by an attorney of an accounting when a guardian, conservator, executor, or administrator dies or absconds in the course of his or her duties. However, no provision has been made in Section 1120 for the situation in which the trustee retained no attorney prior to his or her death or disability, while in Sections 932, 1555, and 1907 provision is made for the attorney of record in the proceedings to present the accounting if the guardian, conservator, executor, or administrator did not retain an attorney.

See Generally:
1) 7 WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §§245-250 (8th ed. 1974) (administration of testamentary trusts).
2) 38 CAL. S.B.J., 568, 778 (1963) (history of similar Sections 932, 1555, 1907 of the Probate Code).

Administration of Estates; amendment of charitable trusts

Probate Code §§1120, 1138.1, 1138.6 (amended).
AB 1869 (Chel); STATS 1975, Ch 474
(Effective August 29, 1975)
Support: State Bar of California; Attorney General

Whenever a trust is created with a noncharitable income beneficiary and a remainder interest is given to charity, the trust is designated a charitable remainder trust [COMMERCE CLEARING HOUSE, EXPLANATION OF THE TAX REFORM ACT OF 1969 143 (1969) (hereinafter cited as EXPLANATION OF THE ACT)]. For purposes of federal estate taxation, pursuant to the provisions of the Tax Reform Act of 1969 [INT. REV. CODE OF 1954, §664], a charitable contribution deduction is allowed for the gift of the remainder interest only if the trust allows the income beneficiary a specific amount or a fixed percentage of the trust [EXPLANATION OF THE ACT, *supra*, at 144].

Chapter 474 amends Sections 1120 and 1138.1 of the Probate Code to provide that a court may amend the provisions of a testamentary trust to qualify the decedent's estate for the charitable estate tax deduction.

The personal representative of the decedent's estate may petition the court for such an amendment before final distribution is made, or the petition may be made by the trustee, beneficiary, or remainderman either before or after final distribution of the trust (§1120). However, no amendment may be ordered by the court unless prior written consent to the changes or disclaimers of interest have been received from all interested parties (§1120). Furthermore, although the existence of a spendthrift provision in the trust will not prevent the court from having the power to amend the trust (§1120), provision may be made in the original trust instrument to prohibit the court from reforming the trust, whether or not it contains a spendthrift provision (§1138.5).

See Generally:

1) 5 WITKIN, SUMMARY OF CALIFORNIA LAW, *Taxation* §242 (8th ed. 1974) (charitable deductions).