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Administration of Estates

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Administration of Estates

Administration of Estates; mental capacity

Probate Code §6100.5 (new).
SB 421 (Petris); 1985 STAT. Ch 940

Existing law provides that every person of sound mind¹ over the age of eighteen years may dispose of his or her separate property, real and personal, by will.² Chapter 588 provides that a person is not mentally competent to make a will if, at the time the person is making the will, the person is unable to (1) understand the nature of the testamentary act; (2) understand and recollect the nature and situation of his or her property; or (3) remember and understand his or her relations to those living descendants, spouse, and parents, or others whose interests are affected by the will.³ Further, Chapter 588 states that anyone suffering from a mental disorder with symptoms including delusions or hallucinations which result in that person devising property in a manner he or she would not have done but for the mental disorder, lacks the requisite mental competence to make a will.⁴ Chapter 588 specifies that existing law relating to the admissibility of evidence proving the existence of mental incompetence or mental disorders is not superseded by the provisions of Chapter 588.⁵

1. *In re Watson's Estate*, 195 Cal. App. 2d 740, 742, 16 Cal. Rptr. 125, 127 (1961) (meaning of unsound mind).

2. CAL. PROB. CODE §20.

3. *Id.* §6100.5(a)(1). See *In re Glass' Estate* 331, 165 Cal. App. 2d 380, 383, 331 P.2d 1045, 1047 (1958).

4. CAL. PROB. CODE §6100.5(a)(2). See *In re Martin's Estate*, 270 Cal. App. 2d 506, 509, 75 Cal. Rptr. 911, 913 (1969).

5. CAL. PROB. CODE §6100.5(b) (admissibility of evidence proving the existence of mental incompetency or disorders contained in Probate Code §329).

Administration of Estates; public guardians

Welfare and Institutions Code §8014 (repealed); §8013 (amended).

SB 652 (Robbins); 1985 STAT. Ch 69

Support: Los Angeles County; County Supervisors Association of California; Office of Local Government Affairs

Existing law provides that a public guardian¹ may claim against a ward's estate reasonable expenses incurred in executing a guardianship or conservatorship, along with compensation for the public guardian and the guardian's attorney as determined by a court.² Prior law prohibited a public guardian or a county clerk from charging for filing and processing services of a county clerk in a guardianship or conservatorship petition.³ With the enactment of Chapter 69 a public guardian may charge a ward's estate for the reasonable filing and processing fees of the county clerk.⁴

1. The public guardian is to be appointed by the county board of supervisors. CAL. WELF. & INST. CODE §8000.

2. *Id.* §8013 (the proper court is the court in which the accounts were settled).

3. 1967 Cal. Stat. c. 1667, §42, at 4182 (enacting CAL. WELF. & INST. CODE §8014).

4. CAL. WELF. & INST. CODE §8013.

Administration of Estates; transfer without probate, construction of wills, intestate succession

Civil Code §§1134.5, 1389.4 (amended); Health and Safety Code §§13113.8, 18102 (amended); Probate Code §§591.1, 591.9, 1201 (repealed and new); §§245, 246, 247, 591.8, 6124 (new); §§240, 591.2, 591.3, 591.4, 591.5, 630, 6147, 6152, 6205, 6402, 6402.5, 6408, 6408.5 (amended); Vehicle Code §§5910, 9916 (repealed and new); §9852.2 (new).

AB 196 (McAlister); 1985 STAT. Ch 982

Support: California Law Revision Commission; Department of Motor Vehicles; Department of Housing and Community Development

TRANSFER WITHOUT PROBATE

Under existing law, summary probate proceedings are available when the gross value of the decedent's real property in this state does not exceed \$10,000 and the gross value of the decedent's real and personal property in this state, with certain exceptions, does not exceed

\$60,000.¹ In computing the gross value of the decedent's real and personal property under existing law, the value of motor vehicles, registered mobilehomes² and commercial coaches³ is excluded.⁴ Chapter 982 expands these provisions to exclude the value of all registered or off-highway vehicles, undocumented vessels,⁵ manufactured homes,⁶ and truck campers.⁷

Under existing law, upon the death of the registered or legal owner of a registered⁸ vehicle, registered vessel, manufactured home, mobilehome, commercial coach, truck camper, or titled off-highway motor vehicle, the interest of the decedent, irrespective of the value of the vehicle, may be transferred to a surviving heir or beneficiary under the decedent's will without probate proceedings, unless other property in the decedent's estate necessitates probate.⁹ Existing law further provides that upon presenting to the Department of Motor Vehicles required certificates and information,¹⁰ an heir or beneficiary may secure a transfer of registration of title or interest of the decedent.¹¹ Chapter 982, however, prevents the transfer of registered vessels for forty days following the death of the decedent.¹²

CONSTRUCTION OF WILLS

Under existing law, when a will or trust provides for issue or descendants to take under a devise or bequest without specifying the manner, the property is divided among the class in the same method prescribed by statute for intestate succession,¹³ unless a contrary intention is expressed in the will.¹⁴ Chapter 982 provides that a contrary intention is not expressed by use of the words "per capita" when living members of a designated class are not all of the same generation, or by contradictory wording such as "per capita and per stirpes" or "equally and by right of representation."¹⁵

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1. CAL. PROB. CODE §630(a),(b).
 2. CAL. HEALTH & SAFETY CODE §18008 (definition of mobilehome).
 3. *Id.* §18001.8 (definition of commercial coach).
 4. CAL. PROB. CODE §630.
 5. CAL. VEH. CODE §9840(2)(g) (definition of undocumented vessel).
 6. CAL. HEALTH & SAFETY CODE §18007 (definition of manufactured home).
 7. CAL. PROB. CODE §630(a). Cal. Health & Safety Code §18013.4 (definition of truck camper).
 8. CAL. VEH. CODE §4000 (vehicles subject to registration).
 9. *Id.* §5910.
 10. *Id.* §5910(b) (required certificates and information).
 11. *Id.* §5910.
 12. *Id.* §9916.
 13. CAL. PROB. CODE §240 (description of intestate succession).
 14. *Id.* §245(a). The provisions of Probate Code §245(a) were formerly found in Probate Code §240. Compare CAL. PROB. CODE §245 with 1983 Cal. Stat. c. 842, §22, at _____.
 15. *Id.* §245(b). Chapter 982 provides that the will or trust may call for property to be

Under Chapter 982, if a will or trust calls for property to be distributed or taken "per stirpes," "by representation," or "by right of representation,"¹⁶ the property to be distributed will be divided into as many equal shares as there are living children of the designated ancestor, if any, and deceased children who leave issue then living.¹⁷ Each living child of the designated ancestor is allocated one share, and the share of each deceased child that leaves issue then living is divided in the same manner.¹⁸ Chapter 982 further provides that if a will or trust calls for property to be distributed or taken "per capita at each generation,"¹⁹ the property to be distributed will be divided into as many equal shares as there are living members of the nearest generation of issue then living and deceased members of that generation that leave issue then living.²⁰ Each living member of that generation takes one share.²¹ The shares of deceased members of that generation are aggregated into a lump sum which descends to the next generation of descendants of the deceased ancestors; the division process is repeated with each living member taking one share and the shares of deceased members being aggregated and descending further.²²

INTESTATE SUCCESSION

Under existing law, a relationship of parent and child exists between a person and his or her natural parents²³ regardless of the marital status of the natural parents,²⁴ and between an adopted person and his or her adopting parents.²⁵ Under existing law, the relationship between a person and his or her foster parent or stepparent had the same effect as if it were an adoptive relationship if the relationship began during the parties' joint lifetimes, and the foster parent or stepparent would have adopted the child but for legal barriers.²⁶

distributed or taken "in the manner provided in Section 245 of the Probate Code." *Id.* §245(a).

16. Applies only to wills or trusts executed on or after January 1, 1986. *Id.* §246(b). Chapter 982 provides that the will or trust may call for property to be distributed or taken "in the manner provided in Section 246 of the Probate Code." *Id.* §246(a).

17. *Id.* §246(a). The provisions of Probate Code §246 were formerly found in Probate Code §240. Compare CAL. PROB. CODE §246 with 1983 Cal. Stat. c. 842, §22, at ____.

18. *Id.*

19. Applies only to wills or trusts executed on or after January 1, 1986. *Id.* §247(c). The provisions of Probate Code §247(a) were formerly found in Probate Code §240. Compare CAL. PROB. CODE §247 with 1983 Cal. Stat. c. 842, §22, at _____. Chapter 982 provides that the will or trust may call for property to be distributed or taken "in the manner provided in Section 247 of the Probate Code." *Id.* §247(a)

20. *Id.* §247(a).

21. *Id.*

22. *Id.*

23. CAL. PROB. CODE §6408(c) (definition of natural parents).

24. *Id.* §6408(a)(1).

25. *Id.* §6408(a)(2).

26. *Id.* §6408(b).

Under existing law, however, the parent-child relationship is not terminated if the other natural parent and the child lived together as parent and child.²⁷ Chapter 982 permits an adopted child to inherit from the deceased natural parent or relatives of the deceased natural parent when the deceased natural parent was (1) married to or cohabiting with the child's other natural parent at the time the child was conceived, and (2) the adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.²⁸

Existing law dictates the procedure for dividing community real property interests of a decedent that are acquired from the decedent's predeceased spouse when the predeceased spouse died within fifteen years prior to the death of the decedent, and the decedent leaves no surviving spouse or issue.²⁹ Chapter 982 would make the same rules of inheritance that are applicable to real property interests applicable to community personal property.³⁰

27. *Id.* §6408.5.

28. *Id.*

29. CAL. PROB. CODE §6402.5. If the decedent is survived by issue of the predeceased spouse, real property passes to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse, they take equally, but if of unequal degree, those of more remote degree take by representation. If there is no surviving issue of the predeceased spouse, but the decedent is survived by a parent or parents of the predeceased spouse, real property passes to the predeceased spouse's surviving parent or parents equally. If there is no surviving issue or parent of the predeceased spouse, but the decedent is survived by issue of a parent of the predeceased spouse, the issue take real property equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree, those of more remote degree take by representation. If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, real property passes to the next of kin of the decedent in the manner provided in Probate Code §6402. If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Probate Code §6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Probate Code §6402. Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent. A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship that would entitle the person to the larger share. *Id.*

30. *Id.*

Administration of Estates; division of trusts

Probate Code §1138.1 (amended).

SB 596 (Lockyer); 1985 STAT. Ch 32

(Effective May 7, 1985)

Support: Justice William Newsom, First Appellate District—Division One

Existing law empowers the superior court, upon petition of a trustee, beneficiary, or remainderman, to make specified changes to and determinations regarding a testamentary or inter vivos trust.¹ Chapter 32 adds to the authority of the superior court the power to divide a trust into two or more separate trusts if good cause is shown and all parties in interest consent.²

1. CAL. PROB. CODE §1138.1 (specifying types of modifications and determinations the superior court may make).

2. *Id.* §1138.1(a)(14). Existing law ensures that the interests of unknown, unascertained, or unborn persons will be represented and protected when a trust is ordered divided. CAL. CIV. PROC. CODE §373.5. *See Mabry v. Scott* 51 Cal. App. 2d 245, 253-55, 124 P.2d 659, 663-64 (1942) (unascertained or unborn person with a present or prospective interest in property may be conclusively represented by a guardian ad litem).

Administration of Estates; Uniform Transfers to Minors Act

Probate Code §§3918, 6345 (amended).

AB 690 (Sher); 1985 STAT. Ch 90

Support: California Law Revision Commission

Existing law authorizes the naming of a substitute custodian for the transfer of property to a minor on the occurrence of a future event.¹ Chapter 90 restores authority² for a transferor, making a present irrevocable transfer, to designate one or more persons as successor custodians to serve, in order of priority, in case the original or a prior designated successor custodian is unable, declines, or is

1. CAL. PROB. CODE §3903. This section permits the naming of a future custodian (1) under a will or trust; (2) as a beneficiary of a power of appointment; or (3) of contractual rights such as an insurance policy, annuity contract, P.O.D. account, benefit plan, or similar future payment right. *Id.*

2. *Compare* 1969 Cal. Stat. c. 1074, §1(a), at 2060 (amending CAL. CIV. CODE §1161(a)) (designation of successor custodians) *with* CAL. PROB. CODE §3918 (designation of successor custodians).

ineligible to serve, or resigns, dies, becomes incapacitated or is removed.³ The designation must be made contemporaneously with the execution of the document by which the transfer is made,⁴ and a successor custodian so designated has priority over a successor custodian designated by a prior custodian.⁵

3. CAL. PROB. CODE §3918. Chapter 90 also amends CAL. PROB. CODE §6345 to conform with the language of §3903, utilizing substitute, rather than alternate, custodians. See *Id.* §6345.

4. *Id.* §3918(b) Designation must either be made in the same transaction and by the same document by which the transfer is made or by executing and dating a separate instrument of designation as part of the same transaction and contemporaneously with the execution of the document by which transfer is made. *Id.*

5. *Id.*

