



1-1-1983

Administration of Estates

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Administration of Estates*, 14 PAC. L. J. 369 (1983).

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Administration of Estates

Administration of Estates; holographic and nuncupative wills

Probate Code §§53, 54, 55, 325 (repealed); §53 (new); §§50, 1035 (amended).

AB 2331 (McAlister); STATS. 1982, Ch 187

Support: California Law Revision Commission; Estate, Trust and Probate Law Section of the State Bar

Prior to the enactment of Chapter 187, holographic¹ wills² had to be entirely written, signed, and dated in the handwriting of the testator.³ California courts strictly construed the statute by requiring substantial compliance.⁴ Consequently, a holographic will that did not meet all the requirements would be invalid even if the testator's intent was clear and there was no threat of fraud⁵ or duress.⁶ Chapter 187 eliminates these harsh results by adopting related provisions of the Uniform Probate Code.⁷

Chapter 187 requires only the signature and the *material* provisions of the holographic will⁸ to be in the testator's handwriting.⁹ Accordingly, if this provision is met, the testator may use a printed will form for a holographic will.¹⁰ Chapter 187 parallels the recent case, *Estate of Black*,¹¹ in which the California Supreme Court held that the testator did not intend to incorporate any printed matter that was relevant to the substance of the will and, therefore, found the holographic will was valid.¹² Furthermore, while Chapter 187 does not require a date on

1. CAL. PROB. CODE §53(a) (definition of holographic).

2. 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §85 (8th ed. 1974) (definition of will).

3. CAL. STATS. 1931, c. 281, §53, at 590 (enacting CAL. PROB. CODE §53).

4. See WITKIN, *supra* note 1, §125; see also *Estate of Hazelwood*, 249 Cal. App. 2d 263, 265, 57 Cal. Rptr. 332, 334 (1967) (a holographic will must contain a complete date including day, month, and year).

5. CAL. CIV. CODE §1572 (definition of fraud).

6. *Id.* §1569 (definition of duress); see *Recommendation Relating to Holographic and Nuncupative Wills*, 16 Cal. L. Revision Comm'n Reports 301, 308 (1982) [hereinafter cited as *Recommendations*].

7. UNIFORM PROBATE CODE §2-503; see Bird, *Sleight of Handwriting: The Holographic Will in California*, 32 HASTINGS L.J. 605, 629 (1981). Compare CAL. PROB. CODE §53 with CAL. STATS. 1931, c. 281, §53, at 590.

8. See CAL. PROB. CODE §53(c) (definition of will as it applies to this section).

9. *Id.* §53(a).

10. See *Recommendations*, *supra* note 6, at 311.

11. 82 L.A. Daily J. D.A.R. 646 (Cal. Sup. Ct., Mar. 1, 1982).

12. See *id.* at 646; see also Bird, *supra* note 7, at 623.

holographic wills,¹³ an undated holographic will, when its date cannot be otherwise established to be later than the date of the testator's other will, is invalid to the extent of any inconsistent provisions in the other will.¹⁴ Similarly, if the will is undated and there is a possibility that the testator lacked testamentary capacity, the will is invalid unless it is established that the testator had testamentary capacity when the will was written.¹⁵ In addition, this holographic will provision applies to holographic codicils and holographic testamentary instruments that appoint executors or revise or revoke other wills.¹⁶

Prior law allowed a person in fear of death to make a nuncupative¹⁷ will by recitation before two witnesses.¹⁸ As a practical matter, little use was made of this provision because of the restrictions.¹⁹ Since the simplification of requirements for holographic wills decreases the need for nuncupative wills,²⁰ Chapter 187 repeals all provisions for nuncupative wills.²¹ Chapter 187 applies only to wills of persons who die on or after January 1, 1983.²²

13. Compare CAL. PROB. CODE §53 with CAL. STAT. 1931, c. 281, §53, at 590 (enacting CAL. PROB. CODE §53).

14. See CAL. PROB. CODE §53(b)(1); see also *Recommendations*, *supra* note 6, at 311.

15. CAL. PROB. CODE §53(b)(2).

16. *Id.* §53(c); see also *Estate of Cuneo*, 60 Cal. 2d 196, 201, 384 P.2d 1, 4, 32 Cal. Rptr. 409, 412 (1969).

17. See CAL. STAT. 1931, c. 281, §54, at 590 (enacting CAL. PROB. CODE §54 (definition of nuncupative)).

18. See *id.*

19. See *Recommendations*, *supra* note 6, at 309.

20. See Niles, *Probate Reform in California*, 31 HASTINGS L.J. 185, 211 (1979).

21. See CAL. STAT. 1931, c. 281, §§50, 54, 55, 325, at 589, 590, 602 (enacting CAL. PROB. CODE §§50, 54, 55, 325).

22. See CAL. STAT. 1982, c. 187, §8, at —.

Administration of Estates; statutory wills—forms

Probate Code §§56, 56.1, 56.2, 56.3, 56.4, 56.5, 56.6, 56.7, 56.8, 56.9, 56.10, 56.11, 56.12, 56.13, 56.14 (new).

AB 2452 (Harris); STATS. 1982, Ch 1401

Support: Department of Consumer Affairs; State Bar of California

Existing law establishes the minimum legal requirements for executing formal and holographic wills.¹ Chapter 1401 now provides substantive provisions and terminology for the drafting of two types of statutory wills.² The new California Statutory Will and California

1. CAL. PROB. CODE §50.

2. See *id.* §§56-56.14.

Statutory Will with Trust are specific forms³ with a limited choice of dispositive clauses that permit the distribution of estates to spouses⁴ and descendants.⁵ These forms incorporate by reference the full text of the mandatory clauses, definitions, and rules of construction enacted by Chapter 1401.⁶

Chapter 1401 apparently was enacted to offer those who normally would not prepare a traditional will the opportunity to devise property in an expedient and inexpensive fashion.⁷ The forms provided by Chapter 1401 are simple and easy to follow.⁸ Each will form includes a printed notice explaining the effects and limitations and recommending that individuals consult with both an attorney concerning the legal effects of the will and a financial advisor concerning the tax consequences of estate disposition.⁹ Chapter 1401 also defines and disposes of personal property,¹⁰ permits the designation of a single cash gift,¹¹ provides specific rules for the execution and amendment¹² of the statutory will, allows the appointment of executors,¹³ trustees¹⁴ and guardians,¹⁵ and delineates the powers of individuals acting in these capacities.¹⁶

3. *Id.* §§56.7, 56.8.

4. *Id.* §56(b) (spouse means the testator's husband or wife at the time the testator signs a California statutory will).

5. *Id.* §§56(e) (descendants include children, grandchildren, and their lineal descendants of all degrees), (f) (a class designation of "descendants" or "children" includes persons legally adopted into the class during minority as well as persons naturally born into the class). *See generally id.* §56(i).

6. *See id.* §56.3. A statutory will includes only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the will is executed. *See id.* §56.14. The full texts of the property disposition clauses and the mandatory clauses are included at the end of each will form. *See id.* §§56.7(6), 56.8.(7). *See generally Proposed Uniform Acts for a Statutory Will, Statutory Trust and Statutory Short Form Clauses*, 15 REAL PROP. PROB. & TR. J. 837 (1980) (proposed statutory will incorporating mandatory clauses by reference, but adopting no will form).

7. *See* Marquis, Hipple & Becker, *The Questionnaire Will: A Device to Facilitate Testamentary Freedom For The Less Affluent*, 30 U. FLA. L. REV. 669, 676 (1976). *See generally Significant Current Trends in Probate & Trust Law 1977*, 12 REAL PROP. PROB. & TR. J. 528 (1977).

8. *See generally* CAL. PROB. CODE §§56.7, 56.8.

9. *See id.* §§56.7(1), (3), 56.8(2), (4).

10. *See id.* §§56.7(2.1), 56.8(2.1), 56.9.

11. *See id.* §§56.7(2.2), 56.8(2.2).

12. *See id.* §§56.1, 56.2, 56.6.

13. *Id.* §56(c) (executor means both the person so designated in a California statutory will and any other person acting at any time as the executor or administrator under a California statutory will. *See id.* §§56.7(3.1), 56.8(3.1).

14. *Id.* §56(d) (trustee means both the person so designated in a California statutory will and any other person acting at any time as the trustee under a California statutory will). *See id.* §56.8(3.2).

15. *See id.* §§56.7(3.2), 56.8(3.3).

16. *See id.* §§56.12(b), (c), 56.13(b).

Division of Property Under Statutory Wills

The Statutory Will and Statutory Will with Trust divide the testator's¹⁷ property into the following two categories: (1) personal and household effects,¹⁸ and (2) the residuary estate.¹⁹ Personal and household items automatically pass to the testator's surviving spouse, and in the event there is no surviving spouse, the items would be divided equally between the testator's surviving children by the executor.²⁰ If neither spouse nor children survive the testator, personal effects and household items become part of the residuary estate.²¹

The statutory wills created by Chapter 1401 do not dispose of property that passes at death by operation of law or contract and do not normally apply to the proceeds of a testator's life insurance or the benefits of a testator's retirement plan.²² Both statutory wills allow the testator to make a single cash gift, free of inheritance tax,²³ to an individual or charity by completing and signing the appropriate boxes on the will form.²⁴ If the donee fails to survive the testator, or the designated donee does not accept the gift, the gift lapses and becomes part of the residuary estate.²⁵

Residuary Estate Disposition

The Statutory Will Form permits distribution of the residuary estate (1) to the surviving spouse, and if the spouse is not living, to the testator's children and the descendants of any deceased child; (2) to the testator's children and the descendants of any deceased child, with nothing left to the testator's spouse; or (3) according to intestacy statutes in effect on the date of the testator's death.²⁶ Under the Statutory Will with Trust Form, the testator's estate may be distributed (1) to the surviving spouse, and if the spouse is not living, then in one trust for the testator's children and the descendants of any deceased child until no living child of the testator is under the age of 21; or (2) to the testator's children and the descendants of any deceased child in one trust

17. *Id.* §56(a) (testator means any person choosing to adopt a California statutory will).

18. *See id.* §§56.7(2.1), 56.8(2.1), 56.9 (personal and household effects include books, jewelry, clothing, automobiles, household furnishings and effects, and other tangible articles of a household or personal use).

19. *Id.* §§56.9, 56.7(2.3), 56.8(2.3); *see id.* §126 (definition of residuary estate). *See generally id.* §§56.10, 56.11.

20. *Id.* §56.9.

21. *Id.*

22. *Id.* §§56.7(2), 56.8(3).

23. *Id.* §§56.7(2.2), 56.8(2.2).

24. *Id.*

25. *Id.*

26. *Id.* §56.7(2.3), 56.10.

until no living child of the testator is under the age of 21 and, even if alive, nothing is left to the spouse of the testator.²⁷ The interests of trust beneficiaries under a statutory will are not transferable by assignment or operation of law, and are not subject to attachment, the claims of creditors, execution, bankruptcy, or other legal processes to the fullest extent permitted by existing law.²⁸

Execution and Amendment of Statutory Wills

Chapter 1401 permits any person of sound mind over the age of 18 to execute a statutory will by completing the appropriate blanks in the form and signing it in the presence of at least two, and preferably three witnesses.²⁹ Execution of the attestation clause by the witnesses must satisfy existing statutory standards.³⁰

The testator's choice of residuary estate disposition is signified by signature in the space provided on the will form next to that clause, and by writing the words "not used" in the remaining boxes.³¹ In the event the testator mistakenly does not sign any of the distribution clauses, or signs more than one of the distribution clauses, Chapter 1401 provides for estate distribution according to intestate succession statutes.³²

Revocation or amendment of a statutory will may be made by codicil, and may be in any form that complies with existing statutory formalities.³³ Any addition or deletion, however, made on the face of a Chapter 1401 statutory will, other than in accordance with instructions, is ineffective and will be disregarded.³⁴

Appointment of Executors, Trustees, and Guardians

Under both forms of the Chapter 1401 statutory will, the testator is allowed to nominate an executor, a personal guardian, and a property guardian.³⁵ In addition, the Statutory Will with Trust Form allows the nomination of a trustee.³⁶ Each will form provides spaces for the designation of an original and two alternates for each position.³⁷ All

27. *Id.* §56.8(2.3), 56.11.

28. *Id.* §56.13(c)(1).

29. *Id.* §56.2.

30. *Id.*; *see id.* §329.

31. *Id.* §§56.7(2.3), 56.8(2.3).

32. *Id.* §56.4. *See id.* §§220-228.

33. *Id.* §56.6(a); *see id.* §74. *See generally* 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Wills and Probate* §137 (8th ed. 1973).

34. CAL. PROB. CODE §56.6(b). *But cf.* Estate of Carr 93 Cal. App. 2d 750, 209 P.2d 956 (1949) (holographic codicil on the face of a witnesses will given effect).

35. CAL. PROB. CODE §§56.7(3.1), (3.2), 56.8(3.1), (3.3).

36. *Id.* §56.8(3.2).

37. *Id.* §§56.7(3.1), (3.2), 56.8(3.1), (3.2), (3.3).

powers granted to guardians and trustees may be exercised without court authorization,³⁸ and the testator is given an option of requiring that they post bond.³⁹

In addition to granting trustees all statutory powers,⁴⁰ the California Statutory Will with Trust permits the trustee to hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust, the management of any trust asset, and any litigation affecting the trust.⁴¹ The trustee has discretion to pay one or more of the beneficiaries any portion or all of the principal or income of the trust as is deemed necessary for their health, support, maintenance, and education.⁴² The trust terminates when there is no child under age 21, and the remaining assets are then distributed to the testator's living descendants.⁴³ If a distribution is being made to more than one beneficiary, the trustee has the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.⁴⁴

Conclusion

By creating two forms of statutory wills, Chapter 1401 offers a simple and inexpensive alternative to intestacy for those who normally would not have a traditional will prepared.⁴⁵ Chapter 1401 defines and disposes of personal property, permits the designation of a single cash gift, and provides specific rules for the execution and amendment of the statutory wills.⁴⁶ To avoid the possible misuse of the preprinted statutory wills, the forms proposed by Chapter 1401 contain warnings against misuse, a limited choice of dispositive clauses, and uncomplicated tax planning elements.⁴⁷

38. *Id.* §§56.12(c), 56.13(b).

39. *Id.* §§56.7(3.3), 56.8(3.4).

40. *See generally id.* §§570, 1120.2, 2108 (powers of executors, trustees, and guardians).

41. *Id.* §56.13(b)(2)(A).

42. *Id.* §§56.11(a)(2)(A), (b)(1)(A).

43. *Id.* §§56.11(a)(2)(B), (b)(1)(B).

44. *Id.* §56.13(b)(2)(B).

45. *See* text accompanying *supra* notes 2-7.

46. *See* text accompanying *supra* notes 9-11.

47. CAL. PROB. CODE §§56.7(1), (3), 56.8(2), (4). *See* text accompanying *supra* notes 24-25.

Administration of Estates; substitution of trustees under deeds of trust

Civil Code §2934a (amended).

AB 3586 (Lewis); STATS. 1982, Ch 521

Support: California Bankers Association; Orange County Recorder

Existing law permits the substitution of a trustee¹ under a trust deed² when the trustee's duties are only incidental to the exercise of the power of sale.³ The substitution must be both recorded in the county where the property is located and executed and acknowledged by either all of the beneficiaries under the trust deed or by their successors in interest.⁴ In addition, existing law requires that the book and the page where the trust deed is recorded, the name of the trustor, and the name of the new trustee be included in the recorded substitution.⁵ Prior law also required that the substitution record contain the date of the execution of the trust deed.⁶ Chapter 521 apparently facilitates the location of the trust deed for examination by interested parties by requiring that the date of the recordation of the trust deed, rather than the date of execution,⁷ be included in the substitution.⁸

Chapter 521 also permits the substitution of trustees for multiple deeds of trust by the recording of a single document that complies with the above requirements.⁹ Trustees may be substituted in this manner, however, only if the substitution is being recorded in the same county where the original deeds of trust are recorded and if all the deeds of trust have the same trustee and beneficiary or beneficiaries.¹⁰

Prior law required that whenever a trustee was substituted, the beneficiary or beneficiaries had to give notice of the substitution to all persons designated to receive a copy of a notice of default¹¹ and to the trustee of record.¹² The requirement of giving notice prior to recording the substitution could be fulfilled by mailing copies of the substitution

1. CAL. CIV. CODE §2219 (definition of trustee). See generally R. BERNHARDT, CONTINUING EDUCATION OF THE BAR, CALIFORNIA MORTGAGE AND DEED OF TRUST PRACTICE §3.9 (1979).

2. See generally BERNHARDT, *supra* note 1, §§3.3-3.10; 3 B. WITKIN, SUMMARY OF CALIFORNIA LAW *Security Transactions* §§4-9 (8th ed. 1974) (overview of the deed of trust).

3. See CAL. CIV. CODE §2934a(a)(1). See generally BERNHARDT, *supra* note 1, §3.9; WITKIN, *supra* note 2, §9 (powers and duties of the trustee).

4. See CAL. CIV. CODE §2934a(a)(1). See generally WITKIN, *supra* note 2, §25(3).

5. See CAL. CIV. CODE §2934a(a)(2).

6. See CAL. STATS. 1979, c. 1015, §6, at 3477 (amending CAL. CIV. CODE §2934(a)). See generally WITKIN, *supra* note 2, §25(3).

7. Compare CAL. CIV. CODE §2934a with CAL. STATS. 1979, c. 1015, §6, at 3477.

8. See CAL. CIV. CODE §2934a(a)(2).

9. See *id.*

10. See *id.*

11. See *id.* §2924b (the trustee or successors in interest and the beneficiary or assignee, whose interest is subject to the deed of trust being foreclosed, are to receive copies of a notice of default). See generally *id.* §2924 (notice of default is a statement that a breach of obligation for which a transfer in trust is security has occurred).

12. See CAL. STATS. 1979, c. 1015, §6, at 3477.

to the designated parties.¹³ The recorded substitution had to contain an affidavit stating that notice had been given as required and proof of service of a copy to the trustee then of record.¹⁴

Chapter 521 now requires notice of the substitution only when a trustee is substituted after a notice of default has been recorded but prior to the giving of the notice of sale.¹⁵ In most cases notice will not be necessary.¹⁶ After a notice of default, however, interested parties may wish to enjoin a foreclosure action.¹⁷ If notice of substitution were not given, they would be unaware of the change of trustee and would be hindered in filing the injunction.¹⁸ Similarly, without the notice provision, trustees who had been replaced by substitution may be unaware that they were no longer authorized to continue the action.¹⁹ Chapter 521 ensures the receipt of a notice of substitution.²⁰ This change is in accord with case law that has held that an informal substitution by agreement of the parties may be valid, though not in strict compliance with notice requirements.²¹

13. *See id.*

14. *See id.* (proof of service is shown by written acknowledgement by the record trustee, confirming receipt of a copy of the substitution or by an affidavit declaring either personal service of a copy to the trustee or the publication of notice of the substitution).

15. *Compare* CAL. CIV. CODE §2934a(b) with CAL. STATS. 1979, c. 1015, §6, at 3477. *See generally* Cal Civ. Code §2924 (notice of sale states the time and place of sale of the property to satisfy the obligation).

16. *See* U.S. Hertz, Inc. v. Niobrara Farms, 41 Cal. App. 3d 68, 85, 116 Cal. Rptr. 44, 55, (1974) (absence of notice of substitution of trustee in no manner affected the purchaser's rights); Brooks v. Independent Exploration Co., 109 Cal. App. 2d 475, 485, 240 P.2d 1037, 1043 (1952) (all parties to the trust deed acted under and recognized the substitution of trustees).

17. *See generally* Miller v. Cote, 127 Cal. App. 3d 888, 179 Cal. Rptr. 753 (1982); Dawn Investment Co. v. Superior Court of Los Angeles, 116 Cal. App. 3d 439, 172 Cal. Rptr. 142 (1981).

18. *See generally* CAL. CIV. CODE §2934a(b).

19. *See generally* Nelson v. Crocker National Bank, 51 Cal. App. 3d 536, 124 Cal. Rptr. 229 (1975).

20. *See generally* CAL. CIV. CODE §2934a(b).

21. *See supra* note 16.

Administration of Estates; judicial supervision of testamentary trusts—elimination

Probate Code §1120.1a (new); §§1120, 1215.1 (amended).

AB 3612 (Harris); STATS. 1982, Ch 1199

Support: California Bankers Association; Superior Court of Ventura County

Opposition: Estate Planning, Trust and Probate Law Section of the State Bar; Superior Court of Contra Costa County; Superior Court of Los Angeles County; Superior Court of San Diego County; Supe-

rior Court of San Francisco County; Superior Court of San Mateo County

Prior law provided that when a trust¹ created by a will² continued after distribution³ of the estate,⁴ the superior court⁵ retained jurisdiction over the trust for various purposes.⁶ This broad jurisdiction authorized the court to adjudicate practically all controversies that might have arisen between trustees⁷ and those claiming to be beneficiaries⁸ under the trust.⁹

A later amendment narrowed the jurisdiction of the court, stating that any trust created by a will executed after July 1, 1977 was not subject to the continuing jurisdiction of the superior court.¹⁰ Under existing law, these trusts are administered as written voluntary express trusts rather than as testamentary trusts,¹¹ thereby permitting the administration to proceed free of judicial intervention unless a trustee, beneficiary, or remainderman¹² petitions the court to invoke jurisdiction and review the trust.¹³

Chapter 1199 brings conformity to the administration of trusts by allowing *all* trusts created by wills to proceed free of mandatory judicial intervention.¹⁴ Unless the will provides otherwise or if no trustee is

1. CAL. CIV. CODE §2216 (definition of a trust).

2. See *In re Moody's Estate*, 118 Cal. App. 2d 300, 307, 257 P.2d 709, 713 (1953) (definition of a will).

3. See CAL. PROB. CODE §1020 (explanation of distribution). See generally *id.* §§956, 1000.

4. See *Estate of Glass*, 164 Cal. 765, 767, 130 P. 868, 869 (1913) (definition of estate).

5. See *id.* §301 (probate jurisdiction is in the superior court); 7 B. WITKIN, SUMMARY OF CALIFORNIA LAW *Wills and Probate* §232 (8th ed. 1974).

6. See CAL. STATS. 1975, c. 474, §§ 1, 5, at 980 (amending CAL. PROB. CODE §1120) (purposes include (1) determining to whom the property should pass and be delivered upon termination of the trust if the determination was not made at the time of distribution, (2) settling the accounts and passing on the acts of the trustee, (3) authorizing the trustee to accept additions to the trust from sources other than the estate of the decedent, and (4) other purposes as set forth in this section). See generally WITKIN, *supra* note 5, at §245.

7. CAL. CIV. CODE §2219 (definition of trustee).

8. *Id.* §2218 (definition of beneficiary).

9. See *In re Bissinger's Estate*, 60 Cal. 2d 756, 765, 388 P.2d 682, 687, 36 Cal. Rptr. 450, 455, (1964). See generally WITKIN, *supra* note 5, at §245.

10. Compare CAL. STATS. 1976, c. 860, §3, at 1966 (amending CAL. PROB. CODE §1120) with CAL. STATS. 1975, c. 474, §1.5, at 980. See generally WITKIN, *supra* note 5, at §245 (Supp. 1980); 8 PAC. L.J., REVIEW OF SELECTED 1976 CALIFORNIA LEGISLATION at 192 (1977) [hereinafter cited as PAC. L.J.].

11. Compare CAL. PROB. CODE §1120(a) with CAL. STATS., 1976, c. 860, §3, at 1967 (Article 2, commencing with Section 1138 of the Probate Code is applicable to the trust). See generally CAL. PROB. CODE §1138(a) (as used in Article 2 of the Probate Code, trust means a written voluntary express trust). See generally 3 J. GODDARD, PROBATE COURT PRACTICE §1864 (3d ed. 1977); WITKIN, *supra* note 5, §245 (Supp. 1980); PAC. L.J., *supra* note 10, at 192.

12. CAL. CIV. CODE §730.01 (definition of remainderman). See generally *id.* §769 (a remainder is a future estate, other than a reversion, that is dependent on a precedent estate).

13. See CAL. PROB. CODE §1138.1(a). See generally WITKIN, *supra* note 5, §245 (Supp. 1980); PAC. L.J., *supra* note 10, at 192.

14. Compare CAL. PROB. CODE §1120(a) with CAL. STATS. 1976, c. 860, §3, at 1967 and CAL.

a trust company, a trust created by a will is not subject to the continuing jurisdiction of the superior court.¹⁵ In the event that a problem arises in the administration of the trust, however, a trustee, beneficiary, or remainderman has the right to petition the court to settle the controversy.¹⁶

Under prior law, the beneficiaries of trusts created by wills executed both before and after July 1, 1977, received only an annual notice of a hearing and did not receive accountings as a matter of right.¹⁷ Chapter 1199 requires that beneficiaries¹⁸ of trusts created by wills executed before July 1, 1977, receive increased information, thus helping to protect an expectation that the trust would receive judicial supervision.¹⁹ Under Chapter 1199, the trustees of these trusts are required to give notice, by registered or certified mail on or before July 1, 1983, or within six months after the initial funding of the trust, whichever occurs later, of (1) the removal of mandatory court supervision of the trust,²⁰ (2) the right, unless limited or eliminated by the terms of the trust, to petition the court for review,²¹ and (3) the name and location of the appropriate superior court that should receive the petition.²² In addition, if no trustee is a trust company, the notice must include a statement that a hearing will be held to obtain approval for the removal of the trust from the jurisdiction of the court.²³ Moreover, proof of the service of notice must be filed before August 1, 1983, or within seven months after the initial funding of the trust, whichever occurs later,

STATS. 1975, c. 474, §1.5, at 980. *See generally* CAL. PROB. CODE §1138.12 (the intent of the legislature in enacting the article pertaining to written voluntary express trusts was that the administration of trusts proceed expeditiously and free of judicial intervention unless provided otherwise); 3 J. GODDARD, PROBATE COURT PRACTICE §1864 (3d ed. 1977); L.A. Daily J., August 23, 1982, at 1, col. 2 (mandatory court supervision of trusts has already been discontinued in all states that have adopted the Uniform Probate Code).

15. *See* CAL. PROB. CODE §§1120(a), 1120.1a(a).

16. *See id.* (Article 2, commencing with Section 1138, of the Probate Code is applicable to the trust; *id.* §1138.1(a) (the court may be petitioned for the disposition of property; acts and accounts of the trustee; instructions of the trustee; the grant of trustee power; the trustee's compensation; the appointment, removal, or acceptance of resignation of a trustee; transfer to another jurisdiction; and trust termination).

17. *See* CAL. STATS. 1980, c. 955, §25.3, at 3033 (amending CAL. PROB. CODE §1120).

18. *See* CAL. PROB. CODE §1120.1a(a) (beneficiaries include all persons in being who shall or may participate in the corpus or income of the trust). If a beneficiary or remainderman is a minor, ward, or conservatee, any notice or statement required to be sent to them must be sent to the parent, guardian, or conservator, as applicable. If the trustee has actual knowledge that a beneficiary or remainderman is being assisted in the beneficiary's or remainderman's personal affairs by another individual, the trustee must send notice to that individual as well as the beneficiary or remainderman. If the trust is a charitable trust, notice must be sent to the Attorney General, who has the power to settle the account and pass on the acts of the trustee. *See id.* §1120.1a(e), (f).

19. *See id.* §1120.1a.

20. *See id.* §1120.1a(a)(1).

21. *Id.* §1120.1a(a)(2).

22. *Id.* §1120.1a(a)(5).

23. *Id.* §1120.1a(a)(6).

with the court that previously had jurisdiction over the administration of the trust.²⁴ In addition, the trustee must furnish to each income beneficiary²⁵ and upon written request to each other beneficiary or remainderman (1) a statement of the income and principal receipts and disbursements that have occurred since the immediately preceding statement,²⁶ and (2) a summary of the trust assets with their cost and value, the net income of the trust, and the trustee's compensation.²⁷ The summary also must include a statement of the recipient's right to petition the court to settle any problems that may arise upon review of the summary.²⁸ Thus, the beneficiaries are given the information necessary to determine whether to obtain the judicial review available to them.²⁹

Chapter 1199 provides additional requirements for the removal of judicial supervision if no trustee is a trust company.³⁰ In that case, the trustee may remove the trust from the continuing jurisdiction of the court only with the approval of the court.³¹ To obtain this approval, the trustee must file a verified petition setting forth (1) the trust accounts, (2) a report of the trustee's acts, (3) the condition of the trust estate, and (4) a true copy of the trust instrument.³² Notice of a hearing must be given at least 30 days before the hearing to each beneficiary, including all persons in being who may participate in the trust.³³ The court may receive testimony from any interested person and may grant or deny the petition.³⁴

24. *Id.*

25. CAL. CIV. CODE §730.01 (definition of an income beneficiary).

26. CAL. PROB. CODE §1120.1a(b).

27. *See id.* §1120.1a(c).

28. *See id.* (the summary must include a copy of the text of §1138.1 which states the criteria under which the trustee may petition the court, as well as the name and location of the appropriate court where the petition should be filed). *See generally id.* §1138.1.

29. *See generally id.* §§1120, 1120.1a.

30. *See id.* §1120.1a(d).

31. *Id.*

32. *Id.* (the petition must be filed with the clerk of court).

33. *Id.*

34. *Id.* (the court may require a bond as a condition of granting the petition).

Administration of Estates; Omnibus Probate bill

Civil Code §1183 (amended). Probate Code §845 (new); §§162, 328, 333, 441, 630, 680, 681, 1000, 1200.5 (amended).

AB 3651 (Harris); STATS. 1982, Ch 520

Support: State Bar Estate Planning, Trust and Probate Law Section

Chapter 520 makes various unrelated changes in the area of administration of estates.¹ Chapter 520 provides for the preliminary distribution of estates to a greater variety of beneficiaries,² raises the interest rate on pecuniary legacies,³ broadens the definition of "lease" to allow greater power to administrators and executors,⁴ and changes the notice requirements for petitions related to the estate.⁵

The summary probate procedure provided for by existing law allows a decedent's estate to be distributed to the decedent's spouse and relatives without procuring letters of administration or awaiting probate of the will when the decedent has left no real property and the value of the estate, with specified exceptions, does not exceed \$30,000.⁶ Chapter 520 now extends this right to beneficiaries named in the decedent's will, regardless of whether the beneficiary is related to the decedent.⁷

During the settlement of the decedent's estate, existing law allows the decedent's surviving spouse, minor children, and adult children with physical or mental handicaps, to receive an allowance from the decedent's estate.⁸ Chapter 520 also provides for an additional allowance upon the petition to the court, to other adult children when it is shown that they were dependent, either partially or wholly, upon the decedent for support.⁹ Under Chapter 520, notice of the petition must be given to all other heirs, beneficiaries or persons who have requested special notice of any petition concerning the estate.¹⁰ The court determines what a reasonable amount is for the allowance by balancing the child's needs and the condition of the estate.¹¹

Prior to the enactment of Chapter 520, the interest on general pecuniary legacies was four percent.¹² In order to make the interest rate more equitable in view of the rising rate of inflation, Chapter 520 increases the interest rate on general pecuniary legacies from four percent to ten percent, which is also the rate permitted for judgments.¹³

1. CAL. PROB. CODE §§162, 328, 333, 441, 630, 680, 681, 845, 1000, 1200.5.

2. *See id.* §§630, 680, 681.

3. *See id.* §162.

4. *See id.* §845.

5. *See id.* §§328, 333, 441, 1000, 1200.5.

6. *Id.* §630.

7. *Compare id. with* CAL. STATS. 1980, c. 1149, §42, at 3777.

8. *Id.* §680.

9. *Id.* §§680(b), 681(b).

10. *Id.* §681(b).

11. *Id.* §680(b); Estate of Anderson, 68 Cal. App. 3d 1010, 1014-16, 137 Cal. Rptr. 727, 730-31 (1977).

12. CAL. STATS. 1959, c. 1882, §1 at 4443 (amending CAL. PROB. CODE §162).

13. *Compare* CAL. PROB. CODE §162 *with* CAL. STATS. 1959, c. 1882, §1 at 4443; Cal. Const. art. XV, §1; *see* telephone conversation with Ledi Young, Consultant to the Assembly Committee on the Judiciary (September 16, 1982) (notes on file at the *Pacific Law Journal*; *see also* Estate of Sharp, 257 Cal. App. 2d 851, 856, 65 Cal. Rptr. 438, 441 (1968) (The court states that the rate of

Existing law allows any interested person to lease out the realty of an estate for the benefit of the estate.¹⁴ Additionally, existing law permits executors and administrators to grant an option to buy this realty.¹⁵ Recent case law has allowed both a lease and an option to buy to be made on the same property.¹⁶ Chapter 520 codifies this case law by permitting executors and administrators to petition the court to authorize them to lease the decedent's property with an option to buy.¹⁷

Chapter 520 makes technical changes regarding notice requirements.¹⁸ For example, Chapter 520 establishes a uniform procedure for giving notice of the right to request a special inventory of the estate.¹⁹ Prior law provided several different ways of informing interested persons of this right and of how to obtain it.²⁰ Chapter 520 requires that the notice advise these interested persons that they may serve the executor or administrator of the estate, or their respective attorneys, with a written request for special notice of the filing of an inventory and appraisal of the estate assets or of various other petitions regarding the estate.²¹

interest may vary from the rate proscribed in CAL. PROB. CODE §162 upon the testator's expressed wishes).

14. CAL. PROB. CODE §840.

15. *Id.* §584.3.

16. *See* Telephone conversation, *supra* note 13.

17. CAL. PROB. CODE §845; *see* Telephone conversation, *supra* note 13.

18. CAL. CIV. CODE §1183; CAL. PROB. CODE §§328, 333, 441, 1000, 1200.5.

19. CAL. PROB. CODE §§328, 333, 441.

20. CAL. STATS. 1980, c. 955, §5.5 at 3010 (amending CAL. PROB. CODE §328); CAL. STATS. 1980, c. 955, §5.7 at 3012 (amending CAL. PROB. CODE §333); CAL. STATS. 1980, c. 955, §13.1 at 3015 (amending CAL. PROB. CODE §441).

21. CAL. PROB. CODE §§328, 333, 441. *See id.* §§1200, 1200.5 (petitions that an interested person may request notice of include: petitions having to do with the sale, lease, or granting of an option to buy certain properties of the estate; a petition for the setting aside of all or part of the estate; a family allowance filed before or after the return of inventory; leave to settle a claim; permission to execute a mortgage or give other security, to exchange or partition property; for leave to invest money; for partial, preliminary or final distribution of the estate; for the delivery of the estate of a non-resident; for determination of interests in the estate, to appoint a trustee, of a trustee for instructions and for letters of administration or probate of the will).

