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Administration of Estates

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Administration of Estates

Administration of Estates; administration rules

Civil Code § 2417 (amended); Civil Procedure Code §§ 1700, 1700.1, 1700.2, 1700.3, 1700.4, 1700.5, 1700.6, 1700.7, 1700.8 (repealed); §§ 153, 166, 353, 580a, 904.1, 1026, 1421, 1441, 1443, 1449, 1913 (amended); Financial Code § 6950 (amended); Government Code § 29616 (repealed); §§ 27430, 27431, 27432, 27433, 27434, 27435, 27436, 27444 (new); §§ 12598, 13944, 27643, 69503 (amended); Health and Safety Code § 1289.4 (amended); Labor Code § 100.5 (amended); Military and Veterans Code § 1035.05 (amended); Penal Code § 653.5 (repealed); Probate Code §§ 261, 268, 270, 300, 301, 302, 303, 304, 305, 320, 321, 322, 323, 324, 326, 327, 328, 328.3, 328.7, 329, 330, 331, 333, 334, 351, 352, 360, 361, 362, 370, 371, 372, 372.5, 373, 374, 380, 381, 382, 383, 384, 385, 400, 401, 402, 403, 404, 405, 405.1, 405.2, 405.3, 405.4, 405.5, 405.6, 406, 407, 408, 409, 410, 420, 421, 422, 423, 424, 425, 426, 427, 440, 441, 442, 443, 450, 451, 452, 453, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 480, 481, 500, 501, 502, 510, 511, 512, 520, 521, 522, 523, 524, 525, 526, 540, 541, 541.1, 541.5, 542, 543, 544, 549, 550, 553.3, 553.5, 600, 601, 602, 603, 604, 605, 606, 607, 608, 608.5, 609, 609.5, 610, 611, 612, 613, 614, 615, 660, 661, 662, 663, 664, 665, 707, 709, 709.1, 716, 719, 720, 721, 736, 750, 751, 752, 753, 920, 920.3, 920.5, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 956, 1000, 1001, 1002, 1003, 1004, 1020, 1020.1, 1021, 1021.5, 1022, 1023, 1024, 1025, 1025.5, 1026, 1027, 1028, 1040, 1041, 1042, 1043, 1043a, 1054, 1055, 1060, 1060.1, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1080, 1081, 1082, 1100, 1101, 1102, 1103, 1104, 1105, 1106, 1140, 1140.5, 1141, 1142, 1142.3, 1142.5, 1143, 1144, 1144.5, 1145, 1146, 1147, 1147.5, 1148, 1149, 1150, 1152, 1154, 1155, 1190, 1191, 1192, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 2523, 9257, 9863, 17208, 21100, 21120 (repealed); §§ 3, 39, 45, 81, 300, 301, 350, 351, 352, 353, 354, 355, 356, 360,

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AB 2841 (Harris); 1988 STAT. Ch. 1199

(Effective July 1, 1989)

Support: City & County of San Francisco Public Administrator; California State Bar—Estate Planning, Trust & Probate Section; California State Association of Public Administrators, Guardians & Conservators; California Probate Referees

INTRODUCTION

Chapter 1191 is part of the California Law Revision Commission's ongoing major reform of the California probate code. The following is an overview of the year's most significant changes in probate law with citations to relevant portions of the Probate Code and the comments and recommendations of the California Law Revision Commission. A detailed treatment of the subject is scheduled for publication as a Legislative Note in volume 20, number 3 (April 1989) of the *Pacific Law Journal*.

1. *Qualifications and Duties of Probate Referees*

The State Controller must appoint probate referees who have passed qualification examinations.¹ Chapter 1191 imposes a statutory duty upon probate referees to act promptly and with reasonable diligence in appraising property.² The code does not, however, provide a specific standard since the time for appraisal may vary according to the size of the estate.³

2. *Removal of Probate Referees*

Chapter 1191 provides the procedure by which personal representatives can remove probate referees: (1) the personal representative may remove the initial probate referee appointed as a matter of right;⁴ and (2) the personal representative may make a showing of cause, including incompetence and undue delay of the probate referee.⁵

1. CAL. PROB. CODE § 401(a). See also *Recommendations Relating to Probate Law*, 19 CAL. L. REV. COMM'N REP. 741, 747 (1988) [hereinafter *Recommendations*].

2. CAL. PROB. CODE § 8940(a). See also *Recommendations*, *supra* note 1, at 751.

3. CAL. PROB. CODE § 8940(a). See also *Recommendations*, *supra* note 1, at 757.

4. CAL. PROB. CODE § 8924(a)(2). See also *Recommendations*, *supra* note 1, at 750.

5. CAL. PROB. CODE § 8924(a)(1). See also *Recommendations*, *supra* note 1, at 750.

3. *Commission of Probate Referees*

Commissions and expenses compensating a probate referee must be paid from the estate.⁶ Additionally, Chapter 1191 expressly prohibits a probate referee from withholding the appraised property until the referee's commissions are paid.⁷ Chapter 1191 creates a statutory commission for probate referees which consists of one-tenth of one percent of the total value of the property of each estate appraised.⁸ Further, upon the application of the probate referee, the court may allow a commission of over ten thousand dollars if it determines that the reasonable value of the referee's services exceeds that amount.⁹

4. *Election of Expert Appraiser for Unique Personal Property*

The personal representative may elect an independent, qualified expert, in lieu of the appointed probate referee, to appraise unique, artistic, unusual, or special tangible items of personal property.¹⁰

5. *Elimination of Jury Trials*

Chapter 1191 eliminates the availability of jury trials for will contests or contests of accounts.¹¹ As a result, the judge will determine issues of fact in such proceedings.¹²

6. *Removal of Personal Representatives*

The court has express discretion to deny a petition for removal of the first appointed personal representative, if granting the petition would be contrary to the sound administration of the estate.¹³

7. *Duty of Personal Representative to Acknowledge Responsibilities*

A personal representative must file an acknowledgement of receipt of a statement of duties and liabilities of the office.¹⁴

6. CAL. PROB. CODE §§ 8960(a), (c); 8961(a), (b).

7. *Id.* § 8960(b). *See also Recommendations, supra* note 1, at 751.

8. CAL. PROB. CODE § 8961(a). *See also* § 8963 (the commission of a probate referee must not exceed \$10,000 or be less than \$75 for any estate appraised).

9. *Id.* § 8963(b).

10. CAL. PROB. CODE § 8904(a). *See also Recommendations, supra* note 1, at 749.

11. CAL. PROB. CODE §§ 7200, 8252(b), 11002(a). *See also Recommendations, supra* note 1, at 793, 794, 882.

12. CAL. PROB. CODE §§ 7200, 8252(b), 11002(a). *See also Recommendations, supra* note 1, at 793, 794, 882.

13. CAL. PROB. CODE § 8503. *See also Recommendations, supra* note 1, at 800.

14. CAL. PROB. CODE § 8404(a)-(c). *See also Recommendations, supra* note 1, at 799.

8. *Duty of Public Administrators*

Chapter 1191 extends the duty of a public administrator to include taking property when the property is subject to loss, injury, waste, or misappropriation.¹⁵ Further, if the public administrator is unable to take possession or control of a decedent's property, then the public administrator has express immunity from any resulting liability.¹⁶

9. *Litigation Involving Decedents*

Where a cause of action is pending against the decedent at the time of death, Chapter 1191 allows the plaintiff to file an action directly against the insurer without first filing a claim.¹⁷

10. *Appeals*

Chapter 1191 clarifies what orders may be appealed.¹⁸ An appeal is allowed on orders or refusals of orders granting or revoking letters testamentary, letters of administration, and letters of administration with the will annexed.¹⁹ An appeal is not permitted, however, of orders granting or revoking letters of special administration or letters of special administration with general powers.²⁰ Appeals are permitted of an order granting, modifying, or terminating a family allowance.²¹ Finally, Chapter 1191 permits an appeal of an order authorizing the granting of an option to purchase real or personal property.²²

11. *Non-domiciliary Decedents*

California probate courts must grant automatic recognition to a sister state's order admitting a nondomiciliary's will into probate, unless: (1) The decedent was not actually domiciled in that sister state, (2) all interested parties were not provided with due process notice and an opportunity to contest the sister state proceedings, or (3) the sister state's determination was not final.²³ Further, a personal representative from a sister state may use the affidavit procedure to collect

15. CAL. PROB. CODE § 7601(a). *See also Recommendations, supra* note 1, at 714, 715.

16. CAL. PROB. CODE § 7601(b). *See also Recommendations, supra* note 1, at 714.

17. CAL. PROB. CODE § 9390(a). *See also Recommendations, supra* note 1, at 905.

18. CAL. PROB. CODE § 7240. *See also Recommendations, supra* note 1, at 924.

19. CAL. PROB. CODE § 7240(a). *See also Recommendations, supra* note 1, at 924.

20. CAL. PROB. CODE § 7240(a). *See also Recommendations, supra* note 1, at 924.

21. CAL. PROB. CODE § 7240(e). *See also Recommendations, supra* note 1, at 925.

22. CAL. PROB. CODE § 7240(g). *See also Recommendations, supra* note 1, at 925.

23. CAL. PROB. CODE § 12522(a)-(c). *See also Recommendations, supra* note 1, at 999.

personal property of small estates without petitioning for ancillary administration.²⁴

Chapter 1191 continues to permit California probate courts to recognize the probate proceedings of foreign nations, if the proponent of the will satisfies the burden of showing that certain conditions have been satisfied.²⁵ Chapter 1191 deletes, however, the requirement that the will must have been valid under either the law of the decedent's domicile at the time of death, or under California probate provisions.²⁶ Furthermore, Chapter 1191 permits California probate courts to refuse to admit a will when the order to admit the will was made under a foreign nation's judicial procedures that are inconsistent with the requirements of due process of law.²⁷

13. Interest

Chapter 1191 reduces the interest rate on general pecuniary devisees to one percentage point above the minimum rate payable on a series EE United States savings bond purchased one year after the date of the testator's death and held to maturity.²⁸

14. Statutory Time Limit for Deficiency Charges Against the Estate

Chapter 1191 limits the time an estate may be charged with a deficiency to one year after the testator's death: after one year has passed, any expenses paid out of the estate are a charge against the share of the specific devisees, and the personal representative has an equitable lien on the specifically devised property.²⁹

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24. CAL. PROB. CODE § 12570. *See also Recommendations, supra* note 1, at 1000, 1001.

25. CAL. PROB. CODE § 12523 (a),(b). *See also Recommendations, supra* note 1, at 999.

26. CAL. PROB. CODE § 12523(a). *See also Recommendations, supra* note 1, at 999. *See generally* 1972 Cal. Stat. ch. 713, sec. 3, at 1302 (amending California Probate Code section 362).

27. CAL. PROB. CODE § 12523(b). *See also Recommendations, supra* note 1, at 999.

28. CAL. PROB. CODE § 12001(a),(b). *See also Recommendations, supra* note 1, at 1023, 1024.

29. CAL. PROB. CODE 12002(c). *See also Recommendations, supra* note 1, at 1023.

Administration of Estates; education of conservators

Probate Code § 1835 (new).
SB 2352 (Mello); 1988 STAT. Ch. 742

Under existing law, a conservator has specified rights, duties, limitations, and responsibilities.¹ Chapter 742 requires counties to provide private conservators with written information explaining conservator functions.²

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1. See CAL. PROB. CODE §§ 2100-2151, 2350-2359 (describing rights and duties). See also *id.* § 2350 (definition of conservator).

2. *Id.* § 1835(a). The information must include: (1) The conservator's rights, duties, limitations, and responsibilities, (2) the conservatee's rights, (3) how to assess and meet the needs of the conservatee, (4) how to use community-based services to meet the needs of the conservatee, (5) how to ensure that the conservatee is provided with the least restrictive possible environment, (6) the court procedures and processes relevant to conservatorships, and (7) the procedures for inventory and appraisal and the filing of accountings. *Id.* § 1835(b)(1)-(7). The information package must be updated periodically to include changes in the law. *Id.* § 1835(c)(3). The information package must be developed by the judicial council after consulting with designated organizations. *Id.* § 1835(c). Chapter 742 authorizes each county to charge \$10 for the package. *Id.* § 1835(d).

Administration of Estates; Public Employees Retirement System—death benefits

Government Code § 21369 (repealed); §§ 21204.5, 21211.1, 21211.2, 21211.3, 21211.4, 21211.5, 21211.6 (new); §§ 21211, 21367.6, 21370 (amended).

SB 2123 (Rogers); 1988 STAT. Ch. 1046
(Effective September 20, 1988)

Sponsor: Public Employees Retirement System

Support: California State Employees Association; California Faculty Association

Existing law provides for payments upon the death of a member,¹ survivor,² or beneficiary³ under the Public Employee Retirement

1. CAL. GOV'T CODE § 20013 (definition of member).

2. See generally *id.* §§ 21263, 21364, 21365.5, 21365.6, 21380, 21382.4, 21383 (definition of survivor as per these sections of the code).

3. *Id.* § 20037 (definition of beneficiary).

System (PERS).⁴ Chapter 1046 allows PERS to process death benefit claims more efficiently⁵ by requiring that all claims be paid within 45 days of receipt by PERS of all necessary information.⁶ Chapter 1046 also sets forth technical provisions in order to expedite the death benefit distribution process.⁷

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4. *Id.* §§ 21360-21371 (liability for and payment of basic and special death benefits under PERS).

5. 1988 Cal. Stat. ch. 1046, sec. 1, at ____ (states that the intent of the legislature is to pay death benefits quickly and to have this act take precedence when in conflict with the Probate Code regarding death benefits under PERS).

6. CAL. GOV'T CODE § 21211.6(a). *See generally id.* § 21211.3. Methods of providing necessary information are: death certificate, marriage certificate, birth certificate or, where such certificate is unavailable, a sworn statement by the claimant as to the veracity of the claim. *Id.* Interest will be applied to late payments until payment is made. *Id.* § 21211.6(b).

7. CAL. GOV'T CODE §§ 21204.5 (providing that persons entitled to the survivor's benefits may designate a beneficiary), 21211 (listing the order of payment if no beneficiary is named), 21211.1 (defining how benefits may be paid when an estate is beneficiary), 21211.2(a) (stating that no payments will be made to a member of a class, where there exists a member of a preceding class), 21211.2(b) (stating that satisfactory evidence of entitlement discharges liability of system), 21211.3 (defining evidence sufficient to make payment to a statutory beneficiary), 21211.4 (providing that benefits of \$50 or less may be paid to the first member of the entitled class of beneficiaries who files a claim, and limiting the number of beneficiaries in order to avoid disbursements of less than \$10 under Sections 21211, 21211.1, or 21367.6 of the California Government Code), 21211.5 (listing circumstances under which payment will not be made under Sections 21211, 21211.1, or 21367.6 of the California Government Code), 21211.6 (listing circumstances under which interest applies to a statutory death payment), 21367.6 (clarifying and establishing the statutory sequence of beneficiary entitlement for unpaid monthly allowances or uncashed warrants), 21370 (outlining conditions under which funeral expenses may be paid).