

Memorandum 85-14

Subject: Study L-1030 - Probate Code (Distribution Without Administration)

The attached draft (yellow pages) covers the portion of the new Probate Code relating to collection or transfer of property of small estates without the need for probate. The draft continues (with some modifications and additions) the existing provisions relating to collection or transfer of personal property of a decedent by affidavit. It includes new provisions to permit survivors to obtain a marketable title for real property of relatively small value without the need for probate. The new provisions are drawn in part from legislation enacted in Arizona in 1983. The Arizona statute and background material concerning the Arizona statute is found in the First Supplement to Memorandum 84-66, a copy of which is included in the materials for the January 1985 meeting.

This area of the new Probate Code is one that presents a number of important policy issues. Significant changes the staff draft would make in existing law are discussed below. Also discussed below are policy issues that should be considered in connection with the staff draft. A careful study of the staff draft prior to the meeting is suggested because the details of the staff draft are not discussed below. We will go through the staff draft section by section at the meeting.

THE "CLOSE RELATIVE" REQUIREMENT

If the decedent died without a will, the existing affidavit procedure for personal property can be used only if the takers by intestate succession are relatives of the decedent as listed in the statute: the surviving spouse, the children, the issue of deceased children, parents, brothers or sisters, the issue of a deceased brother or sister, and grandparents. The staff draft does not continue this limitation.

Comparable statutes of other states that we have found do not contain a close relative requirement. The close relative requirement complicates the California statute. More important, the requirement results in the need to probate a modest estate where a more distant relative is entitled to a share in the estate. Since the affidavit procedure can be used by an unrelated person claiming under the will of

the decedent, the close relative requirement is difficult to justify. The relatives excluded by the close relative requirement are issue of grandparents and more remote heirs.

DEFINITION OF "SMALL ESTATE"

Section 9610 of the staff draft defines what constitutes a small estate for the purposes of the affidavit procedure used to collect or transfer personal property by affidavit. The same definition is used in the new provisions relating to court order determining succession to real property.

Section 9610 of the draft retains the substance of existing law with three changes:

(1) Subdivision (a) requires (as does existing law) that the gross value of the decedent's real and personal property in this state not exceed \$60,000. Omitted from subdivision (a) is the requirement of existing law that the gross value of the real property in the estate not exceed \$10,000 in value. This omission was suggested by various local bar associations.

(2) The existing provisions excluding state registered property (vehicles and the like) are expanded by subdivision (c) to include additional types of state registered property (as proposed in the Commission's recommendation to the current legislative session).

(3) A new provision is added in subdivision (e) to provide that the gross value of the decedent's interest in real property shall be determined from the full cash value of the property as determined for real property tax purposes. This provision is drawn from the Arizona statute. Using full cash value as determined from the assessment roll avoids the need for an appraisal of real property and, at the same time, provides sufficient assurance that use of the procedure provided by this part is restricted to relatively small estates. In this connection, it should be noted that neither the existing statute nor the staff draft uses the decedent's equity in the property as the value of the property; instead both use the value of the property without regard to any liens and encumbrances on the property. Thus, the standard now used has no relationship to the value of the decedent's interest in the property. What is needed here is an easy way to determine whether the summary procedures

can be used and a way to avoid the expense of an appraisal merely to determine whether the summary procedures may be used. The use of gross value as determined from the assessment roll satisfies this need.

SIMPLIFICATION OF STATUTORY SCHEME

The Arizona statute attached to the First Supplement to Memorandum 84-66 serves as a model for simplification of the statutory scheme for dealing with modest estates without the need for probate. Under the Arizona statute the affidavit procedure can be used where the "value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars." Real property is ignored. A separate affidavit procedure is provided by the Arizona statute for real property of small value. This greatly simplifies the statute and makes it more useful.

The staff suggests that the Commission consider making the affidavit procedure for personal property available where the gross value of the personal property, wherever located, does not exceed \$60,000, computing the gross value of the personal property as provided in Section 9610 of the staff draft. The staff draft does not adopt this approach but retains the existing statutory scheme. Adoption of the suggested scheme would eliminate a number of problems described below.

(1) Where is intangible personal property located. Section 9610 of the staff draft retains existing language which uses the gross value of the decedent's real and personal property "in this state" as the standard. With respect to personal property, statutes of other states use the standard "personal property, wherever located." This standard avoids the difficulty of determining with respect to some kinds of intangible personal property where the property is "located." Note that the Arizona statute attached to the First Supplement to Memorandum 84-66 permits the use of the affidavit procedure for personal property where the "value of all of the personal property in decedent's estate, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars." Real property is ignored.

(2) Ignoring liens and encumbrances on real property. Section 9610 of the staff draft and existing law use the standard of the gross value of the decedent's property. Liens and encumbrances are ignored, even though they may reduce the decedent's equity in real property to a modest amount.

Use of the gross value standard should not create a significant problem with respect to personal property because state registered property (like motor vehicles and mobile homes which are likely to be subject to a lien or encumbrance) is excluded in determining the value of the property. However, it is likely that the liens and encumbrances on the decedent's real property will reduce the equity in the property to a relatively small amount in some cases, especially since the value of real property has not been increasing rapidly during recent years. The result is that if the decedent has a small equity in real property having a gross value in excess of \$60,000, the affidavit procedure cannot be used for personal property even if the equity in the real property is not significant.

If the Commission decides to retain the gross value concept and to include real property within the \$60,000 limit, the staff recommends the provision of the staff draft that uses the full cash value for real property taxation purposes as the gross value of real property. Although ignoring liens and encumbrances means that the value used has no real relationship to the actual equity in the property, full cash value (ignoring liens and encumbrances) provides a clear and simple standard for determining whether the estate is one for which the summary collection and transfer procedures can be used.

There is one situation where the above analysis fails. That is the case where the decedent owns real property having a value of more than \$60,000 but an equity of a small amount--not more than \$15,000--and there is a need to obtain a marketable title to the real property. This situation is discussed later in this memorandum.

(3) Amount of compensation excluded in determining value of estate. Existing law and the draft statute in determining the value of the estate exclude the amount, not exceeding five thousand dollars (\$5,000), of compensation (salary), including compensation for unused vacation. Also excluded is the entire amount due to the decedent for services in the armed forces of the United States. The reason why there is a \$5,000 limitation on the salary exclusion is unclear to the staff. The salary exclusion was originally \$3,000 and was raised to \$5,000 in 1979. Should the amount be increased? Should the salary exclusion be deleted? It should be noted that in the case of a major employer, such as the state, all salary will be excluded if a statute or employment agreement provides that compensation owing to the deceased employee is to be paid

upon the death of the decedent to a person designated by the deceased employee. Cf. McCarroll, California Decedent Estate Administration Supp. § 3.6 at 69 (Cal. Cont. Ed. Bar 1984). However, in view of the increase in the amount to \$60,000, the staff does not consider the \$5,000 limitation on the salary exclusion to be a matter of great concern.

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY §§ 9630-9644

Forty-day delay requirement. Section 9630 includes a new requirement that 40-days have elapsed since the death of the decedent before the affidavit procedure can be used to collect personal property.

Other states that have a summary procedure generally require that 30 days have elapsed after the death of the decedent before the procedure can be used. Some of these states are Arizona, Delaware, Missouri, and Texas. Arkansas has a 45-day delay requirement. The Commission recommendation relating to transfer of title of vehicles and other state registered property has a 30-day delay requirement. California has a 40-day delay requirement under Section 649.2 (surviving spouse has power to deal with and dispose of real property after 40 days from the death of other spouse). The delay requirement allows time for persons interested in the estate to take some action before a summary distribution is made.

The staff recommends that a uniform 40-day delay requirement be adopted. We already have a 40-day delay requirement in Section 649.2 (disposition of real property by surviving spouse). We would provide a 40-day delay for the affidavit procedure for personal property. We also suggest that the 30-day delay proposed in the Commission's recommendation to the 1985 Legislature relating to vehicles and other state registered property be increased to 40 days. We would then have a uniform delay requirement that would be easier for practitioners to keep in mind. (We would make an exception to this uniform rule in the case of the affidavit procedure we proposed for real property--we propose a six-month delay period in case of that procedure, following the comparable provision of the Arizona statute.)

If there is to be a 40-day delay in collection of personal property by affidavit, we need to deal with the needs of a surviving spouse during the interim. In the First Supplement to Memorandum 85-14, the staff proposes a special provision to permit a surviving spouse to collect compensation owing to the deceased spouse without any delay.

The amount that could be collected under this special provision is not to exceed \$5,000. This amount could be collected by affidavit without regard to the value of the decedent's estate.

Contents of affidavit. Existing law does not outline the contents of the affidavit. Section 9631 lists the matters that must be included in the affidavit.

Presenting decedent's evidence of ownership. Existing law does not deal with the problem of an outstanding instrument that evidences ownership, such as a stock certificate, bank passbook, or promissory note. The existing provisions relating to transfer of title to state registered property require the presentation of the registration or title document, if available. Section 9632 deals with this matter and requires presentation of the evidence of ownership, if available. If the evidence of ownership is not presented, the holder of the property can (but is not required to) require that the person seeking the delivery or transfer of the property execute an agreement to hold the holder harmless.

Proof of identity of persons executing the affidavit. The existing statute does not deal with the problem of the requirement of proof of identity of the persons executing the affidavit. A representative of the California Bankers Association has suggested that the statute deal with the question of the responsibility of the holder of the property to identify the person or persons to whom the property is to be delivered. Section 9633 deals with this matter. The section should be carefully reviewed. It is drawn from the provision governing the duty of the notary public to reasonably identify the person acknowledging an instrument.

Transfer of property to successor. Section 9634 imposes a duty on the holder to transfer the property to the successors of the decedent if the statutory requirements are satisfied and permits the successors to bring an action to recover the property or to compel the transfer if the holder does not comply with the statute.

Restoration if estate proceeding commenced; liability to unsecured creditor or person having superior right. The existing statute does not deal with the situation where the decedent's estate is probated after personal property has been paid, delivered, or transferred pursuant to an affidavit. Nor does it deal with the liability of the person who

receives property using the affidavit procedure if there later proves to be a person with a superior right to the property or if there are unpaid unsecured creditors. The staff draft contains provisions governing these matters.

CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO REAL PROPERTY §§ 9650-9656

This chapter provides a new procedure for obtaining, without the need for a probate proceeding, a court order determining that real property of the decedent passed to one or more persons by intestate succession or under the decedent's will. The procedure is drawn from Sections 650-655 (order determining that property passed to surviving spouse).

Standard for determining size of estate. One policy issue is whether this chapter should apply only to cases where the gross value of the decedent's real and personal property in this state (excluding certain property) does not exceed \$60,000. Consideration should be given to making this chapter apply only where the value of all real property in the decedent's estate located in this state, less liens and encumbrances against the real property as of the date of the decedent's death, does not exceed \$15,000 in value, using the full cash value as determined from the assessment roll as the value. This is the Arizona standard and the standard used in Section 9680 of the staff draft (affidavit procedure for transfer of real property of small estate).

The advantage of the \$15,000, less liens and encumbrances, standard is that it permits creation of a marketable title, without the need for probate, where the decedent had a small equity in the property. For example, the decedent may own a parcel of property having a full cash value of \$100,000 but the equity in the property may be only \$10,000.

Basis of court finding that estate does not exceed \$60,000 in value. Subdivision (b) of Section 9654 is designed to permit the petitioners to obtain a court order that will provide a marketable title to the decedent's real property without the need to incur the expense of an appraisal of the decedent's estate.

CHAPTER 5. AFFIDAVIT PROCEDURE FOR TRANSFER OF REAL PROPERTY OF SMALL ESTATE §§ 9680-9688

This chapter provides a new procedure for use of an affidavit to transfer real property of small value. The standard for determining whether the procedure can be used is that the value of all the dece-

dent's real property in California, less liens and encumbrances, does not exceed \$15,000. The procedure is drawn from the Arizona statute. The Arizona statute does not require that the affidavit contain a notary public's certificate of acknowledgment identifying each person executing the affidavit; this is required by the attached draft statute.

Respectfully submitted,

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DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

PART 2. COLLECTION OR TRANSFER OF SMALL ESTATES
WITHOUT ADMINISTRATION

CHAPTER 1. DEFINITIONS

§ 9600. Construction of words and phrases

9600. Unless the provision or context otherwise requires, the words and phrases defined in this chapter govern the construction of this part.

Comment. Sections 9602-9606 provide definitions of terms used in this part.

3133

§ 9602. County assessment roll

9602. "County assessment roll means the county assessment roll that was the current roll (as defined in Section 125 of the Revenue and Taxation Code) at the time the decedent died.

Comment. Section 9602 is new. See Rev. & Tax. Code § 125 ("Current roll" means the roll containing the property on which current taxes are a lien).

4454

§ 9603. Holder of the decedent's property

9603. "Holder of the decedent's property" means the person owing money to the decedent, having custody of tangible personal property of the decedent, or acting as registrar or transfer agent of the evidences of a debt, obligation, interest, right, security, or chose in action belonging to the decedent.

Comment. Section 9603 is drawn from language of a portion of subdivision (b) of former Section 630.

3700

§ 9604. Real property

9604. "Real property" includes any interest in real property.

Comment. Section 9604 is new.

§ 9606. Successor of the decedent

9606. "Successor of the decedent" means:

(a) If the decedent died leaving a will, the beneficiary or beneficiaries who succeeded to the property of the decedent under the decedent's will. For the purposes of this part, the trustee of an inter vivos trust created by the decedent during the decedent's lifetime is a beneficiary under the decedent's will.

(b) If the decedent died without a will, the surviving spouse of the decedent or, if none, the person or persons who succeeded to the property of the decedent under Section 6402.

Comment. Subdivision (a) of Section 6906 is drawn from a portion of subdivision (b) of former Section 630. Subdivision (b) of Section 6906 expands the provision of subdivision (b) of former Section 630 which limited the persons who could use the former summary affidavit procedure to the following relatives of the decedent: surviving spouse, children, issue of deceased children, parents, brothers and sisters, issue of deceased brothers and sisters, and grandparents. Under subdivision (b), the persons who can use the summary provisions of this part are not so limited.

12329

CHAPTER 2. GENERAL PROVISIONS

§ 9610. Gross value of decedent's property in this state must not exceed \$60,000; exclusions in determining value

9610. (a) The procedures provided by Chapter 3 (commencing with Section 9630) and Chapter 4 (commencing with Section 9650) may be used only if the gross value of the decedent's real and personal property in this state, excluding the property described in subdivisions (b), (c), and (d), does not exceed sixty thousand dollars (\$60,000).

(b) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section [649.1], shall be excluded in determining the property or estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the

property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. As used in this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" have the meaning given those terms by Section 5101.

(c) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 98401) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, or truck camper registered under the provisions of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(d) For the purpose of subdivision (a), the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding five thousand dollars (\$5,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

(e) For the purposes of this section, the gross value of the decedent's interest in real property shall be determined from the full cash value of the property as determined from the county assessment roll.

Comment. Subdivisions (a), (c), and (d) of Section 9610 continue the substance of subdivision (a) of former Section 630, except that Section 9610 does not continue the provision of former Section 630 that precluded the use of affidavit procedure to collect or transfer personal property if the decedent's estate in this state included real property having a gross value exceeding \$10,000. This omission has no effect on the limitation of former Section 630 that the gross value of the decedent's real and personal property in this state (with some exclusions) not exceed \$60,000, and this limitation is continued in Section 9610.

Paragraph (1) of subdivision (b) continues former Section 632. It should be noted that the exclusion for an interest that terminates at death embraces life interests in trusts and contractual rights (such as insurance and employee retirement or death benefits) that terminate at

death, as well as life interests in other property. McCarroll, California Decedent Estate Administration Supp. § 3.6 at 69 (Cal. Cont. Ed. Bar 1984). Paragraph (2) of subdivision (b) is new and is the same as subdivision (b) of former Section 647. Paragraph (2) is a special application of paragraph (1) of subdivision (b) of Section 9610 and continues prior law by making clear that funds in a multiple-party account as defined in Section 5101 are excluded in determining the property or estate of the decedent or its value to the extent that the funds belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. Under former Section 632 (now paragraph (1) of subdivision (b) of Section 9610), joint tenancy accounts were expressly excluded from the decedent's estate, and Totten trust accounts and P.O.D. accounts were presumably also excluded as an estate terminable upon the decedent's death. Paragraph (2) excludes multiple-party account funds, whether or not they are community property under Section 5305, to the extent that the funds pass to a surviving party, P.O.D. payee, or beneficiary. To the extent that the funds do not belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary, the funds are includable in the decedent's estate for the purpose of this part. Cf. Estate of Pezzola, 112 Cal. App.3d 752, 169 Cal. Rptr. 464 (1980).

Subdivision (c) continues former law. The excluded property can be transferred, without probate, under special statutory provisions. See Health and Safety Code § 18102 (manufactured homes, mobilehomes, commercial coaches, and truck campers), Veh. Code §§ 5910 (vehicles), 9916 (vessels). [Note. The Comment to subdivision (c) assumes that Commission's Recommendation Relating to Transfer Without Probate of Title to Certain Property Registered by the State (submitted to 1985 legislative session) is enacted.]

Subdivision (d) provides a salary exclusion in determining the value of the decedent's property. Although this exclusion does not prevent the use of the affidavit procedure under Sections 9630-9640 to collect salary owed to the decedent, other procedures for collection of the salary owed to the decedent may be available. See, e.g., Gov't Code §§ 12479 (designation by state employee of person to receive warrants upon employee's death), 53245 (designation by public employee of person to receive warrants upon employee's death). See also Prob. Code §§ 160 (payment of money due to decedent to person designated by decedent), 9 (collection by surviving spouse of compensation, not exceeding \$5,000, owed by employer to decedent).

Subdivision (e) is a new provision drawn from the Arizona statute. See 1983 Ariz. Stats. ch. 196 (Ariz. Rev. Stats. §§ 14-3971, 14-3972). For a discussion of the Arizona statute, see Effland, Handling Real and Personal Property at Death Under the 1983 Amendments to the Arizona Probate Code, Arizona Bar J. December-January 1984 at 35. Using full cash value as determined from the assessment roll avoids the need for an appraisal of the property and, at the same time, provides sufficient assurance that use of the summary procedure is restricted to relatively small estates. See also Section 9602 (defining "county assessment roll").

CROSS-REFERENCES

Definitions

County assessment roll § 9602

§ 9611. Authority of guardian, conservator, trustee, or custodian

9611. For the purposes of this part:

(a) A guardian or conservator of the estate of a person entitled to any of the decedent's property may act on behalf of the person without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(b) A trustee of an inter vivos trust may act on behalf of the trust.

(c) If the decedent's will nominates a custodian to receive a devise to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act of any state and the nomination has not been revoked, the custodian may act on behalf of the beneficiary until such time as the custodianship terminates.

Comment. Subdivision (a) of Section 9611 is drawn from subdivision (d) of former Section 650 and is consistent with the portion of subdivision (b) of former Section 630 which referred to the guardian or conservator of the estate. Subdivision (b) is new and supersedes the portion of subdivision (b) of former Section 630 which referred to a trustee. Subdivision (c) is drawn from subdivision (c) of former Section 630.

08369

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION
OR TRANSFER OF PERSONAL PROPERTY

§ 9630. Transfer of personal property without probate

9630. Subject to the provisions of this chapter and Chapter 2 (commencing with Section 9610), if 40 days have elapsed since the death of the decedent, the successor of the decedent may do any one or more of the following without procuring letters of administration or awaiting the probate of the will:

(a) Collect any money due the decedent.

(b) Receive any tangible personal property of the decedent.

(c) Have any evidences of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

Comment. Section 9630 is drawn from a portion of former Section 630.

The requirement that 40 days have elapsed since the death of the decedent is new. The new 40-day requirement is consistent with Section [649.2] (surviving spouse has power to deal with and dispose of real

property after 40 days from the death of other spouse). For similar requirements, see Health & Safety Code § 18102 (requirement that 30 days have elapsed from death of owner to permit transfer of registration of manufactured home, mobilehome, commercial coach, or truck camper using affidavit procedure), Veh. Code §§ 5901 (requirement that 30 days have elapsed from death of owner to permit transfer of registration of vehicle using affidavit procedure), 9916 (requirement that 30 days have elapsed from death of owner to permit transfer of ownership of vessel using affidavit procedure). For a provision permitting a surviving spouse to collect salary owing to the deceased spouse without waiting for a 40-day period to elapse, see Section 9_____.

The procedure provided by this chapter can be used only if all of the following conditions are satisfied:

(1) The gross value of the decedent's real and personal property in this state (excluding certain property) does not exceed \$60,000. See Section 9610.

(2) No proceeding for the administration of the decedent's estate is pending or has been conducted in California. See Section 9637.

(3) Not less than 40 days have elapsed since the death of the decedent. See Section 9630.

(4) The person who seeks to collect the money, receive the property, or have the evidences transferred is the successor of the decedent. See Section 9631. See also Section 9606 (defining "successor of the decedent").

The procedure under this chapter can not be used for real property. See Section 9644. For a procedure for obtaining, without probate, a court order determining the persons who succeed to real property of a decedent, see Sections 9650-9656. For an affidavit procedure for obtaining marketable title to real property of a decedent without probate, see Sections 9680-9688.

CROSS-REFERENCES

Definitions

Successor of the decedent § 9606

27406

§ 9631. Furnishing of affidavit

9631. (a) To collect money, receive tangible personal property, or have evidences transferred under this chapter, an affidavit shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) At least 40 days have elapsed since the death of the decedent.

(4) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

(5) The gross value of the decedent's real and personal property in California, excluding the property described in subdivisions (b), (c),

and (d) of Section 9610 of the California Probate Code, does not exceed sixty thousand dollars (\$60,000). The gross value of the decedent's interest in any real property is determined from the full cash value of the property as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(6) A description of the property of the decedent that is to be paid, delivered, or transferred.

(7) The affidavit is executed by the successor of the decedent (as defined in Section 9606 of the California Probate Code) to the decedent's interest in the described property.

(8) No other person has a right to the interest of the decedent in the described property.

(9) Each person signing the affidavit affirms that all of the statements in the affidavit are true and further acknowledges that any false statement may subject the person to penalties relating to perjury.

(c) A declaration under penalty of perjury under the laws of the State of California may be used in place of an affidavit under this chapter.

Comment. Section 9631 supersedes portions of subdivision (b) of former Section 630. The portions of Section 9631 prescribing the contents of the affidavit and the method for determining the value of real property are new.

CROSS-REFERENCES

Definitions

County assesment roll § 9602
Holder of the decedent's property § 9603
Personal representative § _____
Successor of the decedent § 9606
Real property § 9604

Persons authorized to act on behalf of heir or beneficiary § 9611

27628

§ 9632. Presenting decedent's evidence of ownership

9632. (a) If the decedent had evidence of ownership of property described in the affidavit (such as a stock certificate, bank passbook, or promissory note), the evidence of ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

(b) If the decedent had evidence of ownership of property described in the affidavit and the evidence of ownership is not presented with the

affidavit to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, that the person or persons executing the affidavit execute an agreement to hold the holder harmless and indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property.

Comment. Section 9632 is new. Subdivision (a) is comparable to Health & Safety Code § 18102 and Vehicle Code §§ 5910 and 9916 (transfer upon affidavit of manufactured home, mobilehome, commercial coach, truck camper, vehicle, or vessel upon furnishing affidavit and appropriate certificate of ownership or title and registration card, if available). Subdivision (b) is included to protect the holder against the possible claim of another where there is outstanding evidence of ownership.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603

27629

§ 9633. Proof of identity of persons executing the affidavit

9633. (a) Reasonable proof of the identity of each person executing the affidavit shall be provided to the holder of the decedent's property.

(b) Reasonable proof of identity is provided for the purposes of this section if both of the following requirements are satisfied:

(1) The person executing the affidavit is personally known to the holder.

(2) The person executes the affidavit in the presence of the holder.

(c) If the affidavit is executed in the presence of the holder, a written statement under penalty of perjury by a person personally known to the holder affirming the identity of the person executing the affidavit is reasonable proof of identity for the purposes of this section.

(d) If the affidavit is executed in the presence of the holder, the holder may reasonably rely on any of the following as reasonable proof of identity for the purposes of this section:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(A) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(B) A driver's license issued by a state other than California.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the armed forces of the United States.

(e) For the purposes of this section, a notary public's certificate of acknowledgment identifying the person executing the affidavit is reasonable proof of identity of the person executing the affidavit.

(f) If the affidavit does not contain a notary public's certificate of acknowledgment of the identity of the persons executing the affidavit, the holder shall note on the affidavit for each person either that the person executing the affidavit is personally known or a description of the identification provided by the person executing the affidavit.

Comment. Section 9633 is a new provision that is designed to provide clear rules as to the type of identification that reasonably can be relied upon to establish the identity of a person executing an affidavit. The section is drawn from Civil Code Section 1185 (acknowledgment of instrument by notary public) but does not permit a driver's license issued by a Canadian or Mexican public agency to be used as reasonable proof of identity.

CROSS-REFERENCE

Definitions

Holder of the decedent's property § 9603

27927

§ 9634. Transfer of property to successor

9634. (a) If the requirements of Sections 9630 to 9633, inclusive, are satisfied:

(1) The person or persons executing the affidavit are entitled to have the property described in the affidavit paid, delivered, or transferred to them.

(2) A transfer agent of a security described in the affidavit shall change the registered ownership on the books of the corporation from the decedent to the person or persons executing the affidavit.

(b) If the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof, the person or persons entitled to the property may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

Comment. Subdivision (a) of Section 9634 is drawn from portions of former Section 630. The person paying, delivering, or transferring the property is protected from liability. See Section 9635. Payment or transfer pursuant to Section 9634 does not preclude later administration of the decedent's estate. See Section 9637. As to the liabilities of the person receiving the property, see Sections 9638-9642.

Subdivision (b) is new and makes clear that the duty imposed by subdivision (a) can be enforced by an action against the holder. This remedy is in addition to the remedies against the holder if the decedent's estate is probated.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603
 Security § 70

27928

§ 9635. Protection of transferor from liability

9635. Receipt by the holder of the decedent's property of the affidavit constitutes sufficient acquittance for the payment of money, delivery of property, or changing registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder has no duty to see to the application of the property or evidence thereof or to inquire into the truth of any statement in the affidavit.

Comment. Section 9635 continues the substance of the first sentence of former Section 631.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603

27935

§ 9636. Claim against estate in probate

9636. When the money or property claimed in an affidavit presented under this chapter is that of a deceased heir or devisee of a deceased

person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person or persons who furnished the affidavit to the extent that the decree of distribution determines that the deceased heir or devisee was entitled to the money or property under the will or the laws of succession.

Comment. Section 9636 continues the substance of former Section 631.1.

CROSS-REFERENCES

Definitions

Devisee § 34
 Heirs § 44
 Personal representative § _____

27946

§ 9637. No pending probate proceeding; later probate proceeding not precluded

9637. (a) The procedure provided by this chapter may be used only if no proceeding for the administration of the decedent's estate is pending or has been conducted in California.

(b) Payment, delivery, or transfer of a decedent's property pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate.

Comment. Subdivision (a) of Section 9637 is a new provision that is consistent with the last sentence of former Section 631. See Broll, Summary Administration, in 1 California Decedent's Estate Administration § 3.14, at 124 (Cal. Cont. Ed. Bar 1971).

Subdivision (b) is drawn from the last sentence of former Section 631. See Brezzo v. Brangero, 51 Cal. App. 79, 81, 196 P. 87 (1921); Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 607 (1931).

968/614

§ 9638. Personal liability for decedent's unsecured debts

9638. Subject to Section 9641, a person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could

have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died.

Comment. Section 9638 is drawn from Section [645.3] except that Section 9638 does not include the one-year limitation on the duration of personal liability provided by Section [645.3]. Instead, Section 9638 follows [subdivision (c) of Section 649.4], and Section 9538 (by providing that any action based on the debt is subject to the same defenses that would have been available to the decedent if the decedent had not died) adopts the same statute of limitations that would have applied in an action against the decedent on the debt had the decedent not died. The liability under Section 9638 is limited. See Section 9641.

968/623

§ 9639. Personal liability to person having superior right

9639. Subject to Section 9641, a person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable to any person having a superior right to the property by testate or intestate succession from the decedent. An action to enforce the liability under this section is forever barred five years after the affidavit was presented under this chapter to the holder of the decedent's property.

Comment. Section 9639 is new. The section makes clear that a person having a superior right to the property by testate or intestate succession can bring an action against the person who received the property. This remedy is an alternative to petitioning for the probate of the decedent's estate. See Section 9640. The liability under Section 9639 is limited. See Section 9641. The five-year statute of limitations is comparable to that provided under Section [1358] for recovery of property of a missing person if the missing person appears after the distribution of his or her property.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603

27947

§ 9640. Restitution if estate proceeding commenced

9640. Subject to Section 9641, if proceedings for the administration of the decedent's estate are commenced, each person to whom payment, delivery, or transfer of the decedent's property is made under this

chapter and who still has the property is liable for restitution of the property to the estate, or, if the person no longer has the property, is liable for restitution to the estate of the value of the property as of the date of disposition of the property, together with the net income the person received from the property. An action to enforce the liability under this section is forever barred five years after the affidavit was presented under this chapter to the holder of the decedent's property.

Comment. Section 9640 requires restitution to the decedent's estate if probate proceedings are commenced. This liability is limited. See Section 9641. The five-year statute of limitations is comparable to that provided under Section [1358] for recovery of property of a missing person if the missing person appears after the distribution of his or her property.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9103

24594

§ 9641. Limitation on liability

9641. (a) A person to whom payment, delivery, or transfer of the decedent's property has been made under this chapter is not liable under Section 9638 or 9639 if proceedings for the administration of the decedent's estate are commenced and the person restores the property or its value and net income to the estate in compliance with Section 9640.

(b) The property or amount required to be restored to the estate under Section 9640 shall be reduced by any property or amount paid by the person to satisfy a liability under Sections 9638 or 9639.

(c) The aggregate of the personal liability of a person under Sections 9638 and 9639 shall not exceed the value at the date of the decedent's death of the decedent's property paid, delivered, or transferred under this chapter to that person, less the amount of any liens and encumbrances on the property.

Comment. Section 9641 is new and limits the liability of a person to whom payment, delivery, or transfer of the decedent's property is made under this chapter to the property or amount received.

§ 9642. Other remedies not affected

9642. The remedies available under Sections 9638 to 9641, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

Comment. Section 9642 makes clear that the remedies provided in this chapter for creditors and persons having a superior right to the property do not limit any other remedies that are available by reason of fraud or intentional wrongdoing.

28047

§ 9643. Payment of costs and fees of public administrator

9643. A public administrator who has taken charge of the estate of a decedent as provided in Section [1140] may refuse to pay money or deliver property pursuant to this chapter if payment of the costs and fees described in Section [1144.5], subject to the dollar limitations specified in [that section], has not first been made or adequately assured to the satisfaction of the public administrator.

Comment. Section 9643 is the same in substance as subdivision (e) of former Section 630.

28048

§ 9644. Chapter does not apply to real property

9644. Nothing in this chapter applies to real property.

Comment. Section 9644 continues the substance of the last sentence of subdivision (b) of former Section 630.

CROSS-REFERENCES

Definitions

Real property § 9604

28049

CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO
REAL PROPERTY

§ 9650. No pending probate proceeding

9650. The procedure provided by this chapter may be used only if no proceeding is being or has been conducted in this state for administration of the decedent's estate.

Comment. Section 9650 makes the procedure provided by this chapter an alternative to the probate of a small estate.

§ 9651. Petition for court order determining succession to real property

9651. Subject to the provisions of this chapter and Chapter 2 (commencing with Section 9110), if a decedent dies leaving real property in this state and 40 days have elapsed since the death of the decedent, the successor of the decedent to the real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to the real property and that administration of the decedent's estate is unnecessary.

Comment. Sections 9650-9656 are new and provide a procedure for obtaining, without the need for a probate proceeding, a court order determining that real property of the decedent passed to one or more persons by intestate succession or under the decedent's will. The new procedure is drawn from Sections [650-655] (order determining that property passed to surviving spouse).

The procedure provided by this chapter can be used only if all of the following conditions are satisfied:

(1) The gross value of the decedent's real and personal property in this state (excluding certain property) does not exceed \$60,000. See Section 9610.

(2) No proceeding is pending or has been conducted in this state for administration of the decedent's estate. See Section 9650.

(3) The decedent died leaving real property in this state and 40 days have elapsed since the death of the decedent. See Section 9651.

(4) The petition is joined in by all those who have succeeded to the real property by intestate succession or under the decedent's will. See Section 9651. See also Section 9606 (defining "successor of the decedent").

(5) Notice is given to all heirs and devisees of the decedent, to the executor named in the decedent's will, and to all other persons named in the decedent's will, so far as known to the petitioner. Section 9653.

CROSS-REFERENCES

Definitions

Real property § 9604

Successor of the decedent § 9606

Persons authorized to act on behalf of heir or beneficiary § 9611

28455

§ 9652. Contents of petition

9652. (a) The petition shall be verified by all the petitioners, shall contain a request that the court make an order under Chapter 4 (commencing with Section 9650) of Part 2 of Division 8 of the Probate

Code determining that the real property described in the petition is property passing to the petitioners and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in California, excluding the property described in subdivisions (b), (c), and (d) of Section 9610 of the California Probate Code, does not exceed sixty thousand dollars (\$60,000). The gross value of the decedent's interest in real property is determined from the full cash value of the property as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(3) The full cash value of the decedent's real property in this state as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(4) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

(5) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where such proceedings are pending or were conducted.

(6) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and the names and addresses of all other persons named in the will of the decedent, so far as known to any petitioner.

(7) A description of the real property in this state which the petitioners allege is property of the decedent passing to the petitioners.

(8) The facts upon which the petitioners base the allegation that the described property is property passing to the petitioners.

(b) If the petitioners base the allegation that the described property is property passing to the petitioners under the will of the decedent, a copy of the will shall be attached to the petition.

Comment. Section 9652 is drawn in part from Section [650] (petition for order determining property is property passing to surviving spouse). A guardian, conservator, trustee, or custodian is authorized to act as petitioner on behalf of the person to whom the real property passes. See Section 9611.

CROSS-REFERENCES

Definitions

County assessment roll § 9602
 Real property § 9614

Persons authorized to act on behalf of heir or beneficiary § 9611

28459

§ 9653. Notice of hearing

9653. (a) The clerk shall set the petition for hearing.

(b) At least 20 days prior to the date of the hearing on the petition, a notice of hearing and a copy of the petition shall be personally served upon the following persons by the petitioners or mailed, postage prepaid, by the petitioners to the following persons, addressed to the addresses of their offices or places of residence or, if neither of these addresses are known to any petitioner, the county seat of the county in which the proceedings are pending:

- (1) All devisees and heirs known to any petitioner.
- (2) All persons named as executor of the will of the decedent.
- (3) All other persons named in the will of the decedent.

(4) The Attorney General, addressed to the office of the Attorney General at Sacramento, California, if the petitioners allege that the described property is property passing to the petitioners under the will of the decedent and the will involves or may involve (A) a testamentary trust for charitable purposes (other than a charitable trust with a designated trustee resident in this state) or (B) a devise for a charitable purpose without an identified devisee or beneficiary.

Comment. Section 9653 is drawn from Section [653] (petition for order determinating property is property passing to surviving spouse).

28462

§ 9654. Court order

9654. (a) If the court makes the findings required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) that no administration of the decedent's estate is necessary.

(b) The court may make an order under this section only if the court makes all of the following findings:

(1) The gross value of the decedent's real and personal property in California, determined as provided in Section 9610, does not exceed sixty thousand dollars (\$60,000).

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) No proceeding is now being or has been conducted in this state for administration of the decedent's estate.

(4) The real property described in the order is property of the decedent passing to the petitioners.

(b) Unless otherwise requested by a person interested in the decedent's estate, the finding required by paragraph (1) of subdivision (b) shall be made on the basis of the verified petition, and no inventory or appraisal of the decedent's estate shall be required. Whether or not an inventory and appraisal is made, the value of the decedent's interest in real property shall be determined from the full cash value of the property as determined from the county assessment roll.

Comment. Section 9654 is designed to permit the petitioners to obtain a court order that will provide a marketable title to the decedent's real property in case of a small estate without the need to incur the expense of an appraisal of the decedent's estate. However, if any person interested in the decedent's estate so requests, the court may order that an inventory and appraisal be made before an order is made under this chapter. The court need not make a finding as to the value of specific items or parcels of property; the court is required to find only that "the gross value of the decedent's real and personal property in California, determined as provided in Section 9610 of the Probate Code, does not exceed \$60,000." For the purposes of making this finding, real property is valued at its full cash value as determined from the county assessment roll. See the discussion of subdivision (e) of Section 9610 in the Comment to Section 9610.

CROSS-REFERENCES

Definitions

County assessment roll § 9602

Real property § 9604

§ 9655. Finality of order

9655. Upon becoming final, an order under this chapter determining that real property is property passing to the petitioners is conclusive on all persons, whether or not they are in being.

Comment. Section 9655 is drawn from Section [655(c)] (property passing to surviving spouse).

CROSS-REFERENCES

Definitions

Real property § 9604

28725

§ 9656. Personal liability of petitioners

9656. (a) Subject to subdivision (b), the petitioners who receive the decedent's property pursuant to an order under this chapter are personally liable for the unsecured debts of the decedent. In any action upon such an unsecured debt of the decedent, the petitioners may assert any defenses, cross-complaints, or setoffs which would have been available to the decedent if the decedent had not died.

(b) The personal liability of any petitioner shall not exceed the value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

Comment. Section 9656 is drawn from Section [645.3] (small estate set aside).

28726

CHAPTER 5. AFFIDAVIT PROCEDURE FOR TRANSFER OF
REAL PROPERTY OF SMALL ESTATE

§ 9680. Filing affidavit in superior court

9680. (a) Six months after the death of a decedent, a person or persons claiming as successor of the decedent to the decedent's interest in real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state then in any county in which real property of the decedent is located, an affidavit describing the real property and the interest of the decedent therein and stating all of the following:

(1) The value of all real property in the decedent's estate located in California, less liens and encumbrances against the real property as of the date of death, does not exceed fifteen thousand dollars (\$15,000). The value of the decedent's interest in the real property is determined from the full cash value of the property as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(2) Six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to the affidavit.

(3) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

(4) Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.

(5) The affidavit is executed by the successor of the decedent (as defined in Section 9606 of the California Probate) to the decedent's interest in the described property; and if the person or persons executing the affidavit claim under the decedent's will, a copy of the will shall be attached to the affidavit.

(6) No other person has a right to the interest of the decedent in the described property.

(7) Each person signing the affidavit affirms that all statements in the affidavit are true and further acknowledges that any false statement may subject the person to penalties relating to perjury.

(b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person.

Comment. Sections 9680-9684 provide a new procedure for obtaining a marketable title to real property in which the decedent had a small equity. The new procedure is drawn in part from a statute enacted in Arizona in 1983. See 1983 Ariz. Stats. ch. 196 (Ariz. Rev. Stats. §§ 14-3971, 14-3972). For a discussion of the Arizona statute, see December-January 1984 Arizona Bar Journal at 36.

The value of real property may be difficult to determine without an expensive appraisal. And often there is considerable variance in the value determined by different appraisers. For these reasons, Section 9680 ties the value of the real property to that shown on the assessment roll for the year of the death of the decedent. This value is easily and inexpensively determined, and its use serves to limit the use of the procedure provided by this chapter to cases where the decedent had a relatively modest equity in the property.

CROSS-REFERENCES

Definitions

Real property § 9604

Successor of the decedent § 9606

Persons authorized to act on behalf of heir or beneficiary § 9611

28728

§ 9681. Filing fee

9681. Notwithstanding any other provision of law, the total fee for the filing of an affidavit under Section 9680 and the issuance of one certified copy of the affidavit under Section 9682 is thirty-five dollars (\$35).

Comment. The fee provided by Section 9681 is the total fee. No additions to the \$35 fee are to be made for such fees as a law library fee, judges' retirement fee, reporter's fee, or the like.

28729

§ 9682. Issuance and recording of certified copy of affidavit

9682. Upon receipt of the affidavit and the required fee, the court clerk, upon determining that the affidavit is complete, shall file the affidavit and attachments and shall issue a certified copy of the affidavit without the attachments. The certified copy shall be recorded in the office of the county recorder of the county where the real property is located.

Comment. See the Comment to Section 9680.

28730

§ 9683. Effect of recorded affidavit

9683. (a) A good faith purchaser of real property for value from or a good faith lender to a person designated as a successor to the property in a certified copy of an affidavit issued under Section 9682 and recorded in the county in which the real property is located has the same rights and protections as the purchaser or lender would have if the person designated as a successor in the recorded certified copy of the affidavit had been named as a distributee of the real property in a decree of distribution that had become final.

(b) The issuance and recording of a certified copy of an affidavit under this chapter does not preclude later proceedings for administration of the decedent's estate.

Comment. Subdivision (a) of Section 9683 is designed to give the successors designated in the certified copy of the affidavit a marketable title to the real property. Good faith purchasers and lenders are protected to the same extent as they are protected when they deal with the distributee under a final decree of distribution. See Section [1021] (effect of final decree of distribution). Although Section 9683 protects good faith purchasers and lenders, it does not preclude later probate proceedings. See subdivision (b). The successor designated in the recorded affidavit has a duty to restore the property, or its value if the property has been disposed of, to the estate if proceedings are later commenced for administration of the decedent's estate. See Section 9686. The successor also is liable to an unsecured creditor (Section 9684) or to a person having a superior right to the property (Section 9685). This liability is limited. See Section 9687.

406/214

§ 9684. Personal liability for decedent's unsecured debts

9684. Subject to Section 9687, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9682 is personally liable for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died.

Comment. Section 9684 is the same in substance as Section 9638. See the Comment to that section. The liability under Section 9684 is limited. See Section 9687.

406/236

§ 9685. Personal liability to person having superior right

9685. Subject to Section 9687, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9682 is personally liable to any person having a superior right to the property by testate or intestate succession from the decedent. An action to enforce the liability under this section is forever barred five years after the certified copy of the affidavit is issued under Section 9682.

Comment. Section 9685 is comparable to Section 9639. The liability under Section 9685 is limited. See Section 9687.

§ 9686. Restitution if estate proceeding commenced

9686. Subject to Section 9687, if proceedings for administration of the decedent's estate are commenced, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9682 and who still has his or her interest in the property is liable for restitution of that interest to the estate, or, if the person no longer has the interest, is liable for restitution to the estate of the value of the interest as of the date of its disposition, together with the net income the person received from the property. An action to enforce the liability under this section is forever barred five years after the certified copy of the affidavit is issued under Section 9682.

Comment. Section 9686 is comparable to Section 9640. See the Comment to that section. The five-year statute of limitations is comparable to the five-year statute of limitations for adverse possession. See Code Civ. Proc. § 318.

406/243

§ 9687. Limitation on liability

9687. (a) A person designated as a successor to property in a certified copy of an affidavit issued under Section 9682 is not liable under Section 9684 or 9685 if proceedings for the administration of the decedent's estate are commenced and the person restores his or her interest in the property or its value and net income to the estate in compliance with Section 9686.

(b) The interest in the property or amount required to be restored to the estate under Section 9686 shall be reduced by any property or amount paid by the person to satisfy a liability under Sections 9684 or 9685.

(c) The aggregate of the personal liability of a person under Sections 9684 and 9685 shall not exceed the value at the date of the decedent's death of the decedent's property received by that person under this chapter, less the amount of any liens and encumbrances on that property.

Comment. Section 9687 is comparable to Section 9641.

§ 9688. Other remedies not affected

9688. The remedies available under Sections 9684 to 9687, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

Comment. Section 9688 makes clear that the remedies provided in this chapter for creditors and persons having a superior right to the property by testate or intestate succession do not limit any other remedies that are available by reason of fraud or intentional wrongdoing.

DISPOSITION OF REPEALED PROBATE CODE SECTIONS

Probate Code § 630 (repealed). Affidavit procedure for estates not exceeding \$60,000 [as proposed to be amended by recommendation to 1985 Legislature]

Comment. Subdivision (a) of Section 630 is superseded by Section 9610. The former limitation that the gross value of the real property in the estate not exceed \$10,000 is not continued.

The listing of the relatives of the decedent and the requirement that they have a right to succeed to the property of the decedent in subdivision (b) of Section 630 is not continued. See Section 9606 (defining "successor of the decedent") and Section 9630 (persons authorized to use affidavit procedure). The substantive effect of the reference in subdivision (b) to the guardian or conservator of the estate is continued in subdivision (a) of Section 9611. The portion of subdivision (c) relating to a trustee is superseded by the last sentence of subdivision (a) of Section 9606 and subdivision (b) of Section 9611. The reference in subdivision (b) to the beneficiaries under the decedent's will is continued in subdivision (a) of Section 9606 and by use of the defined term "successor of the decedent" in Sections 9630-9644 which supersede former Sections 630-632. The portion of subdivision (b) granting authority to collect money, receive tangible personal property, or have evidences transferred without probate is continued in Section 9630. The reference in subdivision (b) to a "financial institution" is omitted as unnecessary because a financial institution is included within the definition of "holder of the decedent's property" in Section 9603 as a person "owing money to the decedent". See also Section 56 (defining "person"). The phrase "person, representative, corporation, officer or body" in subdivision (b) has been omitted as unnecessary in view of the broad definition of "person" in Section 56. The reference to the "person . . . owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of debt, obligation, interest, right, stock, or chose in action" is continued in the definition of "holder of the decedent's property" in Section 9603, and by use of the defined term in Sections 9630-9644 which supersede former Sections 630-632. The portion of subdivision (b) referring to furnishing an affidavit or declaration under penalty of perjury showing the right of the person or persons to receive the money or property or to have the evidences transferred is superseded by Section 9631. The substance of the last sentence of subdivision (b) is continued in Section 9644.

Subdivision (c) is continued in substance in subdivision (c) of Section 9611.

Subdivision (d) is continued in substance in paragraph (2) of subdivision (a) of Section 9634.

Subdivision (e) is continued in substance in Section 9643.

30926

Probate Code § 631 (repealed). Effect of receipt of affidavit

Comment. The substance of the first sentence of Section 631 is continued in Section 9635. The substance of the last sentence of Section 631 is continued in substance in subdivision (b) of Section 9637. See

Brezzo v. Brangero, 51 Cal. App. 79, 81, 196 P. 87 (1921); Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 607 (1931).

Probate Code § 631.1 (repealed). Claim against estate in probate

Comment. Section 631.1 is continued in substance in Section 9636.

Probate Code § 632 (repealed). Exclusion of estate terminable upon death and of property passing to surviving spouse

Comment. Section 632 is continued in substance in paragraph (1) of subdivision (b) of Section 9610. See the Comment to Section 9610.

CONFORMING AMENDMENTS IN OTHER CODES

Health & Safety Code § 18102 (amended). Transfer of manufactured home, mobilehome, commercial coach, or truck camper without probate

Comment. The phrase "heir in the order named in Section 630 of the Probate Code" in Section 18102 is replaced by the phrase "the person or persons who succeeded to the property under Section 6402 of the Probate Code." Section 630 has been repealed.

Vehicle Code § 5910 (amended). Transfer of vehicle without probate

Comment. The phrase "heir in the order named in Section 630 of the Probate Code" in Section 5901 is replaced by the phrase "the person or persons who succeeded to the property under Section 6402 of the Probate Code." Section 630 has been repealed.

Vehicle Code § 9916 (amended). Transfer of vessel without probate

Comment. The phrase "heir in the order named in Section 630 of the Probate Code" in Section 9916 is replaced by the phrase "the person or persons who succeeded to the property under Section 6402 of the Probate Code." Section 630 has been repealed.

DISBURSEMENTS

RELEASE OF FUNDS AND PROPERTY OF DECEASED PERSONS

GENERAL (Revised 8/81)

8429.1

State employees may designate an individual who upon the death of the employee will be entitled to receive and negotiate State Controller's warrants payable to the deceased employee. (Government Code Section 12479.) Instructions relating to this procedure are presented in SAM Section 8429.3. The Probate Code also provides for the release of funds and property of deceased persons. Instructions relating to this procedure are presented in SAM Section 8429.72.

RELEASE OF WARRANTS OF A DECEASED STATE EMPLOYEE TO A PERSON DESIGNATED BY THE EMPLOYEE (Revised 8/81)

8429.3

Section 12479 of the Government Code reads as follows:

"Any person now or hereafter employed by the State may file with his appointing power a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all warrants that would have been payable to the decedent had he survived. The employee may change the designation from time to time. A person so designated shall claim such warrants from the appointing power. On sufficient proof of identity, the appointing power shall deliver the warrants to the claimant. A person who receives a warrant pursuant to this section is entitled to negotiate it as if he were the payee."

This law permits State employees to designate an individual who on the death of the employee shall be entitled to receive and negotiate State Controller's warrants payable to that employee had the employee survived. Agencies will assure that employees are advised of this right and are afforded an opportunity to make such a designation. State Controller's warrants for payment of death benefits and refunds of employee retirement contributions cannot be released pursuant to this designation. This law relates only to State Controller's warrants and does not authorize agencies to release agency checks. Agency questions regarding the legality of the release of State Controller's warrants to a designee shall be referred to the agency's attorney or the Office of the Attorney General. Single persons with minor dependents shall seek legal advice in order to leave final warrants to a minor.

DESIGNATION (Revised 8/81)

8429.31

Employees will be advised that a designation made pursuant to this law will remain in effect throughout their employment with the State unless the designation is superseded by the filing of a new designation (SAM Section 8429.32) or the designation is revoked (SAM Section 8429.33) and that the designation automatically will terminate on the date of the employee's separation from State employment.

Designations will be obtained on Designation of Person Authorized to Receive Warrants, Std. Form 243. Instructions for completion are on the form. The agency immediately will review the completed Std. Form 243 for correctness and write the date reviewed by the agency and the name of the reviewing agency employee on both copies. The agency will retain the original copy of Std. Form 243 and return the duplicate copy to the employee.

CHANGE OF DESIGNEE (Revised 8/81)

8429.32

A designation made on a Designation of Person Authorized to Receive Warrants, Std. Form 243, may be changed by receipt of a new Std. Form 243, showing thereon the name of the new designee. The agency will review and route the form in the same manner shown above in SAM Section 8429.31.

In addition, the agency will draw a diagonal line across the face of the revoked Std. Form 243 and write thereon, "Superseded by Std. Form 243 received (date)." The duplicate copy of the new Std. Form 243, together with the original of the superseded Std. Form 243, will be returned to the employee.

DISBURSEMENTS

REVOCATION OF DESIGNATION (Revised 8/81)

8429.33

A designation made on a Designation of Person Authorized to Receive Warrants, Std. Form 243, can be revoked by receipt of a new Std. Form 243. The word "NONE" will be shown in the space provided for the designee name and will be processed in the same manner as in a change of designee.

A Std. Form 243 designation may also be revoked by letter to the employee's current appointing power and signed by the employee. Upon the receipt of such a letter, the agency will draw a diagonal line across the face of the revoked Std. Form 243, write thereon "Revoked by letter dated _____," retain the original of the letter, and return the revoked Std. Form 243 together with the duplicate of the letter to the employee.

TRANSFER OF DESIGNATION FOR EMPLOYEE ACCEPTING EMPLOYMENT WITH ANOTHER STATE AGENCY (Revised 8/81)

8429.34

Designation of Person Authorized to Receive Warrants, Std. Form 243, filed by an employee will continue in effect until revoked by the employee or the employee leaves State service. Therefore, a designation on file from an employee that transfers to or accepts employment with another State agency will be forwarded with the employee's other personnel documents to the new employing agency.

RELEASE OF WARRANTS TO DESIGNEE (Revised 8/81)

8429.35

Upon the death of an employee for which the agency has on file an unrevoked Designation of Person Authorized to Receive Warrants, Std. Form 243, the agency immediately will:

- . Initiate a "stop request" with the State Controller's Audits Division (SAM Section 8422.6) for any requested warrants payable to the deceased employee that otherwise the State Controller would mail directly to the employee, and request that these warrants be delivered to the agency.
- . Initiate reasonable efforts to contact the designee and to deliver the warrants due the deceased employee to the designee.

Warrants will be released to a designee only if an unrevoked designation, Std. Form 243, is on file in the agency and only in accordance with that designation. Agencies will not release warrants to a purported designee on the basis of a Std. Form 243 presented by the designee which the agency does not have in its official files.

Warrants due a deceased employee can be released only to a designee or claimant who is 18 years of age or over.

Warrants requested from the State Controller for amounts due a deceased employee which are to be released to a designee will name the deceased employee as payee. Amounts owed an employee who would have been paid, or for whom pay checks already are prepared, from the agency revolving fund must be claimed from the State Controller and paid by the State Controller's warrants.

Agencies, under circumstances prescribed herein, may release warrants payable to a deceased employee:

- . To the designee if the designee is located within sixty days following the death of the employee and if no other claim or request for delivery of these warrants is made orally or in writing to the agency.
- . To a proper claimant under the provisions of the Probate Code (SAM Section 8429.72) if the agency is not able to locate the individual designated by the employee within sixty days following the death of the employee or if the employee did not designate an individual to receive the warrants.

(Continued)

DISBURSEMENTS

(Continued)

RELEASE OF WARRANTS TO DESIGNEE (Revised 8/81)

8429.35

- To the designee or another claimant if the individual designated by the deceased employee to receive the employee's warrants is located within the required sixty-day period but another individual orally or in writing also has requested the warrants under the provisions of the Probate Code (SAM Section 8429.72) provided either the designee or the other claimant agrees to this release of the warrants to the other individual by signing the following statement:

CONSENT AND WAIVER

I hereby consent to the delivery of California State Controller's Warrant(s) numbered _____ to (Recipient) _____, and I hereby waive and release any and all of my right, title, and interest in and to said warrants.

(Signature) Date

(Witness)

(Address)

This signed statement will be retained by the State agency and filed in the deceased employee's personnel folder. Under all other circumstances warrants due a deceased employee will be released only upon receipt of instructions from the agency's attorney or the Office of the Attorney General.

Warrants of a deceased employee will be released to the designee only upon receipt by the agency of a completed Request for Delivery of Warrants of a Deceased Employee. (See 8429.35 Illustration.) This form is not available from Materials Services, Office of Procurement, Department of General Services, and will be typewritten by the agency as needed. If the request will be signed in person by the designee at the agency's office, the request will be typewritten in duplicate by the agency as illustrated in 8429.35 Illustration. If the request will not be signed in person by the designee at the agency's office, the request will be typewritten by the agency as illustrated except that the following notary public's acknowledgment will be typed on the form in lieu of the "DESCRIPTION OF IDENTIFICATION OF DESIGNEE" section of the form:

NOTARY PUBLIC'S ACKNOWLEDGEMENT

State of _____ }
County of _____ } ss

On this _____ day of _____ 19____, before me, the undersigned notary public, personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he (she) executed the same. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year last above written.

(NOTARIAL SEAL)

Notary Public in and for the (City and) County of _____, State of _____

(Continued)

DISBURSEMENTS

(Continued)

RELEASE OF WARRANTS TO DESIGNEE (Revised 8/81)

8429.35

All spaces provided on the Request for Delivery of Warrants of Deceased Employee form must be completed. The original completed and signed copy of the form will be retained by the agency in the deceased employee's personnel file as the agency's record of and authority for release of the warrants. The duplicate copy of the form may be given to the designee.

Upon the release of warrants to the designee, the agency will note on the request for delivery of warrants form the dates, numbers, and amounts of the warrants released.

IDENTIFICATION OF DESIGNEE (Revised 8/81)

8429.36

Sufficient identification must be presented by the designee to assure the agency reasonably that the applicant is the named designee.

If the designee submits the form by mail, or other than in person, at the agency's office, the notary public's acknowledgment identifying the designee will be sufficient identification of the designee.

If the designee personally appears at the agency's office, the agency will complete the "Description of Identification of Designee" section of the form, describing therein the identification presented, and the form normally need not be notarized. Two or more documents such as a social security card, driver's license, credit cards, etc. normally should be sufficient for identification. The designee's signature on such documents may be compared with the designee's signature on the request for delivery of warrants. Also, the designee's stated age and relationship may be compared to that shown on the designation form and that address compared with designee's address included by the deceased employee on the designation form. A statement by a current employee or any known person affirming the designee's identification is adequate and, if obtained, will be noted in the "Description of Identification of Designee" section of the request for delivery of warrants form. If the agency is not satisfied that reasonable identification of the designee has been presented, the agency may require the designee to obtain the notary public's acknowledgment required of designees not appearing in person.

ENDORSEMENT OF WARRANTS TO BE RELEASED TO DESIGNEE (Renumbered 2/65)

8429.37

Warrants payable to a deceased employee can be negotiated by a designee only if the agency releasing the warrants to the designee provides a special endorsement on each such warrant. This endorsement may be typed on the reverse side of each warrant if care is taken to assure that the holes punched in the warrant are not damaged. The endorsement will read:

The undersigned agency hereby certifies that
pursuant to Section 12479 of the Government
Code of California, the payee has designated

(Name of Designee)

to receive and negotiate this warrant, and
that said designation is filed with this agency

(Name of Agency)

by: (Signature of Agency Representative)

Title: _____

The agency will insert the full name of the designee and the name of the agency in the spaces indicated. The authorized agency representative, whose title will be included in the endorsement, personally must sign each such endorsed warrant. The designee will be instructed to endorse the warrant at time of negotiation exactly as shown in the agency's endorsement of the warrant.

STATE ADMINISTRATIVE MANUAL
DISBURSEMENTS

State of California

REQUEST FOR DELIVERY OF WARRANTS OF A DECEASED EMPLOYEE

Name of Deceased Employee	Employee Number	
Division and Department	Location of Employment	
Home Address		
Name of Designee	Relationship	Designation (Form 243) Dated
Street Address	City and State	

(State Department and Address)

TO:

Pursuant to the provisions of Section 12479 of the Government Code of California, I, the undersigned, hereby request that any State of California warrants payable to the above-named deceased employee be delivered to me. I state the following facts in connection with this request:

THAT said employee died on or about _____, 19____, at _____
(location)

THAT I am the designee named above and designated in the designation Form 243 as above set forth, to receive such warrants.

THAT I am an adult.

I certify under the penalty of perjury that the foregoing is true and correct.

Executed at _____, California, this _____ day of _____ 19____.

Signature of Designee

Present Address

DESCRIPTION OF IDENTIFICATION OF DESIGNEE

DISBURSEMENTS

RELEASE OF FUNDS OF DECEASED STATE EMPLOYEES AND FUNDS AND PROPERTY OF OTHER DECEASED PERSONS PURSUANT TO THE PROBATE CODE

GENERAL (Renumbered 2/65)

8429.71

State Controller's warrants for amounts due to deceased State employees that are not released pursuant to Government Code Section 12479 and the implementing procedure described in SAM Section 8429.3 and funds and property of other deceased persons may be released pursuant to the provisions of the Probate Code (1) to claimants qualifying under Section 630 of the Probate Code (SAM Section 8429.72) or (2) to the executor or administrator of the estate of a decedent (SAM Section 8429.73).

RELEASE OF FUNDS AND PROPERTY OF DECEASED PERSONS PURSUANT TO SECTION 630 OF THE PROBATE CODE (Revised 5/81)

8429.72

Section 630 of the Probate Code as amended by Chapter 730, Statutes of 1979 and Chapter 955, Statutes of 1980, reads as follows:

"630. When a decedent leaves no real property, nor interest therein nor lien thereon, in this state, and the total value of the decedent's property in this state, excluding any motor vehicle, or mobilehome or commercial coach registered under the provisions of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, of which the decedent is the owner or legal owner, over and above any amounts due to the decedent for services in the armed forces of the United States, and over and above the amount of salary not exceeding five thousand dollars (\$5,000), including compensation for unused vacation, owing to decedent for services from any employment, does not exceed thirty thousand dollars (\$30,000), the surviving spouse, the children, lawful issue of deceased children, a parent, brothers or sisters of the decedent, the lawful issue of a deceased brother or sister, or the guardian or conservator of the estate of any person bearing such relationship to the decedent, or the trustee named under a trust agreement executed by the decedent during his lifetime, the primary beneficiaries of which bear such relationship to the decedent, if such person or persons has or have a right to succeed to the property of the decedent, or is the sole beneficiary or are all of the beneficiaries under the last will and testament of the decedent, may, without procuring letters of administration, or awaiting the probate of the will, collect any money due the decedent, receive the property of the decedent, and have any evidences of interest, indebtedness or right transferred to such person or persons upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of interest, indebtedness or right, with an affidavit or declaration under penalty of perjury showing the right of the person or persons to receive such money or property, or to have such evidences transferred."

This section of the Probate Code permits agencies to release to claimants (1) State Controller's warrants due deceased State employees which are not released under the authority and procedure described in SAM Section 8429.3, (2) amounts due deceased State employees that are not payable by State Controller's warrants, and (3) funds and property of other deceased persons without letters testamentary or letters of administration when such claimants are the beneficiaries under the last will and testament of the decedent or have a right to succeed to such funds or property because of their relationship to the decedent, if:

- . The decedent leaves no real property, no interest therein, nor lien thereon in this State

(Real property held in joint tenancy by a decedent at the time of his death is not considered as real property left by the decedent for the purpose of this provision since the surviving tenant becomes immediately entitled to sole ownership of the entire property at the time of the decedent's death.)

and

(Continued)

DISBURSEMENTS

(Continued)

RELEASE OF FUNDS AND PROPERTY OF DECEASED PERSONS PURSUANT TO SECTION 630 OF THE PROBATE CODE (Revised 5/81)

8429.72

- . The total value of the decedent's property in this State, excluding any motor vehicle, does not exceed \$30,000 over and above (a) any amount due the decedent for services in the armed forces of the United States and (b) any salary, including compensation for unused vacation, owing the decedent for services from any employment up to and including \$5,000.

(Personal property held in joint tenancy by a decedent at the time of his death is not considered as personal property of the decedent for the purpose of determining whether the decedent's estate exceeds the monetary limitation of this provision since the surviving tenant becomes immediately entitled to sole ownership of the entire property at the time of the decedent's death.)

State Controller's warrants due a deceased State employee who has designated an individual to receive such warrants in the event of the employee's death will be released as described in SAM Section 8429.35.

Funds and property of deceased persons to be released to claimants under Probate Code Section 630 will be released only after receipt of completed Request for Funds and Property of a Decedent forms. This form is not available from Materials Services, Office of Procurement, Department of General Services. The form will be typewritten as illustrated in 8429.35 Illustration. Agencies will prepare:

- . An original copy to be given to the claimant.
- . A duplicate copy to be retained by the agency as the agency's record of and authority for releasing funds and property of decedents.
- . An additional copy to be given to the claimant when checks or warrants payable to the decedent are being released.
- . A copy to be attached to each claim schedule submitted to the State Controller's Office requesting the issuance of a warrant made payable to the claimant.

Claimants must certify under the penalty of perjury to the facts included on the request form. This is accomplished by the claimant signing the form. The request form need not be notarized. (See 8429.72 Illustration.)

Funds due a decedent may be released to the individual designated in the Request for Funds and Property of a Decedent in the form of checks or warrants made payable (1) to the individual designated in the Request for Funds and Property Due a Decedent or (2) to deceased employees or other deceased persons as payees. Agencies will not release funds due a deceased State employee pursuant to this section when the agency has on file an unrevoked Designation of Person Authorized to Receive Warrants, Std. Form 243, except as provided for in SAM Section 8429.35.

Checks drawn or warrants claimed that are to be made payable to the individual designated in the Request for Funds and Property of a Decedent forms will show the payees as follows:

(NAME OF CLAIMANT(S)) - Beneficiary (or Beneficiaries) of

(NAME OF DECEDENT) - Deceased

Claim schedules submitted to the State Controller's Office requesting the issuance of warrants made payable to the individual designated in request forms must include a copy of the request form in addition to the documentation normally required to support payments claimed.

(Continued)

STATE OF CALIFORNIA
REQUEST FOR FUNDS AND PROPERTY OF A DECEDENT

Pursuant to Section 630 of the Probate Code I, the undersigned, an adult, hereby request the State Treasurer to pay and deliver to me the money on deposit and other personal property described below. I state the following facts in connection with this request:

(1) _____ died in the City of _____
(Name of Decedent)

State of California, on or about the _____ day of _____ 19 _____;

(2) Said decedent leaves no real property, nor interest therein nor lien thereon, in this State. The total value of the decedent's property in this State, excluding any motor vehicle, over and above any amounts due to the decedent for services in the armed forces of the United States, and over and above the amount of salary not exceeding three thousand dollars (\$3,000); including compensation for unused vacation, owing to the decedent for services from any employment, does not exceed ten thousand dollars (\$10,000).

(3) At the time decedent died, said decedent

USE (A) had funds or property held in trust in the sum of \$ _____.
APPLICABLE (B) was the owner of certain warrant/s/ issued by the State of California
PROVISION

No. _____ Dated _____ \$ _____

No. _____ Dated _____ \$ _____

No. _____ Dated _____ \$ _____

No. _____ Dated _____ \$ _____

No. _____ Dated _____ \$ _____

(4) I am the _____ of said decedent and
(State Relationship)

CROSS (A) have a right to succeed to the property

OUT (B) the sole beneficiary under the last will and testament of the
(A) or decedent

(B)

(5) I am entitled to the said money or personal property under the provisions of Section 630 of the Probate Code.

I certify under penalty of perjury that the foregoing is true and correct.

Executed at _____ California, this _____ day of _____ 19 _____.

(Signature)

(Number and Street)

City and State

DISBURSEMENTS

(Continued)

RELEASE OF FUNDS AND PROPERTY OF DECEASED PERSONS PURSUANT TO SECTION 630 OF THE PROBATE CODE (Revised 5/81)

8429.72

Agencies should instruct recipients of checks or warrants drawn to deceased employees or other deceased persons as payees to (1) endorse such checks and warrants substantially as follows:

(NAME OF PAYEE)by: (Signature of Recipient)

Beneficiary (or Beneficiaries)

Per Section 630 Probate Code

and (2) present the original of the request form with the checks or warrants to support their endorsements of the checks or warrants. The request form is not to be stapled to the checks or warrants.

Agencies also should instruct recipients (1) that if there is more than one beneficiary all should join in certifying the request form and in the endorsement of the check or warrant and (2) that the check or warrant should be deposited in the recipient's bank in the usual manner and when presented to the State Treasurer through usual channels, if found to be in order, it will be paid.

Questions regarding the preparation of Request for Property and Funds Due a Decedent forms may be referred to the State Treasurer's Office. However, questions regarding the decedent's ownership or interest in real or personal property for the purpose of this law should be referred to an attorney.

RELEASE OF FUNDS AND PROPERTY OF DECEASED PERSONS PURSUANT TO LETTERS TESTAMENTARY OR LETTERS OF ADMINISTRATION (Renumbered 2/65)

8429.73

Funds and property of deceased persons may be released to the executor or administrator of the estate of a decedent upon receipt of certified copies of letters testamentary or letters of administration. Agencies will retain a copy of the certified letters testamentary or letters of administration as the agency's record of an authority for releasing funds and property of deceased persons. A copy of the letters testamentary or letters of administration, in addition to the other documentation normally required to support payments claimed, will be attached to each claim schedule submitted to the State Controller's Office requesting the issuance of warrants made payable to the person designated in the letters testamentary or letters of administration. A reproduced copy (Thermafax, Photostate, etc.) of the letter will be accepted by the State Controller's Office. The dates, numbers, and amounts of any checks or warrants drawn to the decedent as payee and description of any property released should be noted on the agency's copy of such letters.

Funds due a decedent may be released to persons designated in letters testamentary or letters of administration in the form of checks or warrants made payable (1) to the persons designated in the certified copies of letters testamentary or letters of administration or (2) to the deceased employee or other deceased person as payee.

Checks drawn or warrants claimed that are to be made payable to the person designated in the certified copies of letters testamentary or letters of administration will show the payee as follows:

- Where payee is the executor

(NAME OF EXECUTOR) EXECUTOR OF THE LAST WILL AND TESTAMENT OF
(NAME OF DECEDENT) DECEASED.

- When the payee is the administrator

(NAME OF ADMINISTRATOR) ADMINISTRATOR OF THE ESTATE OF (NAME OF DECEDENT) DECEASED.

(Continued)

STATE ADMINISTRATIVE MANUAL

DISBURSEMENTS

RELEASE OF FUNDS AND PROPERTY OF DECEASED PERSONS PURSUANT TO LETTERS
TESTAMENTARY OR LETTERS OF ADMINISTRATION (Renumbered 2/65)

8429.73

Agencies should instruct recipients of checks or warrants drawn to deceased employees
or other deceased persons as payees to endorse such checks and warrants substantially
as follows:

(NAME OF PAYEE)

by: (SIGNATURE OF EXECUTOR OR ADMINISTRATOR)

(USE APPLICABLE TITLE*)

*(EXECUTOR OF THE LAST WILL AND TESTAMENT OF DECEASED PAYEE)

*(ADMINISTRATOR OF THE ESTATE OF THE DECEASED PAYEE)