

STATE OF CALIFORNIA
California Law Revision Commission

TENTATIVE RECOMMENDATION
relating to
THE NEW ESTATE AND TRUST CODE

(CREDITOR CLAIMS AND PAYMENT OF DEBTS)

July 1986

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the provisions it will include in the new Estate and Trust Code the Commission plans to recommend to the Legislature in 1987. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN SEPTEMBER 30, 1986.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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July 17, 1986

LETTER OF TRANSMITTAL

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The goal is to submit a new Estate and Trust Code to the Legislature in 1987. The new code would replace the existing Probate Code. The Commission is sending drafts of portions of the new code to interested persons and organizations for review and comment.

This tentative recommendation sets forth the Commission's tentative conclusions concerning the portion of the new code relating to creditor claims and payment of debts (existing Probate Code Sections 700-738 and 950-980).

The preliminary portion of the tentative recommendation indicates the principal substantive revisions the proposed legislation would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you will find a reference to other portions of the new code that are still being prepared and are not yet available.

A Comment follows each section of the proposed legislation. The Comment gives the source of the section and indicates the nature of the changes the section would make in existing law.

Comments showing the disposition of each section of existing law that would be replaced by the proposed legislation can be found at the end of the tentative recommendation.

7/25/86

Tentative Recommendation Relating To:

CREDITOR CLAIMS
PAYMENT OF DEBTS

The provisions of the new code governing creditor claims and payment of debts generally follow both the organization and substance of existing law. The new code accomplishes some reorganization and also makes many simplifications and technical and clarifying changes. Minor substantive changes are noted in the Comments to the specific provisions of the new code; major changes are described below.

CREDITOR CLAIMS

Notice to Creditors

Under existing law, the only notice required to be given to creditors is published notice of the commencement of administration proceedings.¹ The effect of published notice is that claims of creditors are barred if not presented within four months.² Even if the existence of a creditor is actually known to the personal representative, existing law enables the personal representative to bar the creditor's claim simply by publication and passage of time.

The existing law on this point is inequitable and is of questionable constitutionality. Recent developments in the United States Supreme Court and in sister state jurisdictions raise the

1. Prob. Code §§ 333, 700.

2. Prob. Code § 707.

likelihood that the existing scheme violates due process of law.³ The new code replaces the existing scheme with provisions for actual notice to creditors.

Under the new code, the personal representative would continue to publish notice to creditors; this will help achieve *in rem* effect in probate.⁴ In addition, the personal representative would serve notice within four months after commencement of administration proceedings on creditors actually known to the personal representative. For this purpose, the personal representative would not be charged with a duty to make a special search for creditors or to speculate as to potential creditors who might have a claim against the decedent, but the personal representative would only be required to notify persons who have actually demanded payment by the decedent or the estate in the form of a bill, request for payment, or the like. To minimize the notice burden, the personal representative would not be required to give notice where the personal representative waives formal probate claim requirements and pays a bill or request for payment without a claim.⁵ A creditor would have 30 days after receipt of actual knowledge of probate in which to make a formal claim, but in no case would the creditor be barred before the standard four month claim period has run. The new code also establishes outside limits for entertaining creditor claims--one year after the personal representative is appointed or the time an order for final distribution is made, whichever occurs first.

The Law Revision Commission believes this scheme to be both fair and constitutional, as well as workable within the context of decedent estate administration.

3. See, e.g., *Mennonite Board of Missions v. Adams*, 130 S.Ct. 2706 (1983) and *Continental Insurance Co. v. Mosely*, 653 P.2d 158 (1982) and 683 P.2d 20 (1984).

4. See discussion, *infra*.

5. See discussion of "How a Claim is Made", *infra*.

How Claim is Made

Existing law requires claims to be either filed directly with the court or presented to the personal representative.⁶ This dual procedure introduces unnecessary complexity into what should be a basically simple scheme. The new code initiates a single procedure: the claim must be filed with the court clerk, who notifies the personal representative or attorney of record that a claim has been made.

Often a creditor may demand payment through presentation of a monthly statement or other routine bill. As a matter of practice, the personal representative may pay the bill, even though not made as a formal claim. The new code recognizes this practice by expressly authorizing the personal representative to waive formal requirements where the amount demanded is less than \$500 and pay the demand as if it were a properly made claim. This procedure would apply only during the four month formal creditor claim period.

Time for Making Claims

Existing law requires a creditor's claim to be made within four months after first issuance of letters to a personal representative.⁷ The new code revises this requirement consistent with provisions for actual notice to creditors, discussed above. In addition, the new code permits subsequent amendment or revision of a claim after the time for making the claim has expired. However, an amendment or revision may not be made after either a year has passed since the claim period began to run or the court has made an order for final distribution. This will add flexibility to the law without impairing the ability to close estates expeditiously.

Late Claims

A creditor who was out of state during the claim period and did not receive notice is entitled to make a late claim.⁸ The new code limits this procedure to a non-business creditor who was out of state during the entire claim period. A creditor doing business in the state should be held to the same requirements as other creditors.

6. Prob. Code § 700.

7. See discussion *supra* under "Notice to Creditors".

8. Prob. Code § 707(a).

Time for Personal Representative or Court to Act

Existing law provides that a creditor may treat a claim as rejected and bring an action on the claim if the personal representative or court fails to act on the claim within 10 days after the claim is made.⁹ As a practical matter, this period is unrealistically short. The new code allows the personal representative and the court 30 days in which to act.

Allowance or Rejection of Claim

The new code provides for a single document for allowance or rejection of a claim. This will simplify the forms and papers used and will help ensure uniformity of procedure among the various jurisdictions. The new code encourages the Judicial Council to develop official forms for allowance and rejection of claims.

Alternative Resolution of Disputed Claim

Existing law provides a means for referring a disputed claim to a disinterested person for determination.¹⁰ This procedure is inefficient, since it provides an unsatisfied party with the opportunity to have the court overrule the determination, thereby perpetuating the dispute. The new code eliminates this procedure in favor of a conclusive determination by a court commissioner or judge pro tempore,¹¹ and adds an alternative procedure for binding arbitration of the disputed claim. The arbitration procedure is drawn from the guardianship and conservatorship law.¹² The new code also generalizes these procedures for use in resolving other disputes besides creditor claims, and relocates them among general estate management provisions.

9. Prob. Code § 712.

10. Prob. Code § 718(1).

11. Prob. Code § 718(2).

12. Prob. Code § 2406.

Action on Rejected Claim

If a creditor brings an unsuccessful action to enforce a claim that has previously been rejected, the new code gives the court discretion to impose reasonable attorney's fees on the creditor. This provision will help minimize unnecessary litigation over a claim that has already been reviewed and rejected once before by the personal representative or the court. The provision is drawn from the requirement in existing law that a personal representative who is also a creditor must pay reasonable attorney's fees if the personal representative brings an unsuccessful action on the claim.¹³

PAYMENT OF DEBTS

Priority Debts

The existing Probate Code prescribes statutory priority for payment of certain debts, such as funeral expenses, expenses of last illness, and wage claims.¹⁴ However, other state laws, as well as federal laws, may provide supervening priorities.¹⁵ The new code gives explicit recognition to the supervening priority of federal and other state laws.

The existing wage claim priority is \$900.¹⁶ This amount was set more than 25 years ago and fails to take into account the change that has occurred in the value of the dollar during that period. The new code increases the wage claim priority to \$2,000, consistent with the current bankruptcy code wage claim priority.¹⁷

13. Prob. Code § 703.

14. See, e.g., Prob. Code § 950.

15. See, e.g., Estate of Muldoon, 128 Cal.App.2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal.App.2d 152, 142 P.2d 454 (1943) (state preference).

16. Prob. Code §§ 950, 951.

17. 11 U.S.C. § 507(a)(3).

Court Order for Payment of Debts

Existing law makes clear that the personal representative is not obligated to pay a general debt until so ordered by the court, but fails to clarify the status of the practice of a personal representative to pay routine debts subject to subsequent court confirmation. The new code makes an express statement of law that the personal representative is not precluded from properly making payment of a debt without prior court authorization.

Allocation of Debts Between Spouses

Existing law provides a mechanism for allocating responsibility for marital debts between a surviving spouse and property in the estate of a deceased spouse.¹⁸ Notwithstanding this procedure, the law fails to make clear the substantive basis for the allocation. There is some indication that allocation may be based on the character of the debt as community or separate, but this practice is not supported by statutory language.¹⁹

The new code makes clear that the allocation is to be based on the liability the spouses would have had for the debt at the time of death. This has the effect of incorporating a known body of law governing liability for marital debts,²⁰ and avoids the problems inherent in litigation over "separate" versus "community" character of a debt.²¹

18. Prob. Code § 980.

19. See, e.g., Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L.Rev. 143, 180-181 (1981).

20. Civ. Code §§ 5120.010-5122.

21. Whether a marital debt is separate or community in character is highly problematical. Such a determination made after one of the spouses is deceased and no longer able to testify is suspect.

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- § 9200. Claim by surviving spouse for payment of debt of decedent
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CHAPTER 6. CLAIMS BY PUBLIC ENTITIES

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CHAPTER 7. ALLOWANCE AND REJECTION OF CLAIMS

- § 9300. Procedure by personal representative
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PART 9. PAYMENT OF DEBTS

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- § 11400. Application of definitions
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- § 11420. Priority for payment
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CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND
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- § 11440. When allocation may be made
- § 11441. Petition for allocation
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PART 4. CREDITOR CLAIMS

CHAPTER 1. GENERAL PROVISIONS

§ 9000. "Claim" defined

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following:

(1) Liability of the decedent whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent's death, other than property taxes, special assessments, assessments, gift taxes, and estate taxes.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

Comment. Section 9000 is new. It is drawn from Section 1-201(4) of the Uniform Probate Code.

Subdivision (a)(1) defines "claim" broadly to include all claims whether in contract, tort, or otherwise, including claims for damages for injuries to or death of a person or injury to property and all claims against the personal representative of any decedent who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person.

Subdivision (a)(2) restates former Probate Code Section 707.5(c) without substantive change.

While the term "claim" does not include administration expenses such as personal representative and attorney fees, it does include funeral expenses under subdivision (a)(3). This continues a provision of former Probate Code Section 707(a).

A claim need not be made in the case of foreclosure of a lien on property in the decedent's estate. See Section [to be drafted] (enforcement of security interest). With regard to title to property, see Section [851.5].

§ 9001. Notice to creditors

9001. (a) Service of notice of administration of the estate of the decedent pursuant to Chapter 2 (commencing with Section 9020) of this part and publication or posting of the notice of hearing of the

petition to administer the estate pursuant to Chapter 2 (commencing with Section 8100) of Part 2 constitute notice to creditors of the requirements of this part.

(b) Nothing in this subdivision affects a notice or request to a public entity required by Chapter 6 (commencing with Section 9250).

Comment. Subdivision (a) of Section 9001 restates the first portion of former Probate Code Section 700, with the addition of the reference to service of notice on creditors. Subdivision (b) is intended for cross-referencing purposes only.

Note. The provisions of subdivision (b) relating to notice to public entities may be revised to conform with the provisions concerning actual notice to creditors, after the staff consults with the state agencies affected.

§ 9002. Claim requirement

9002. Except as otherwise provided by statute:

(a) All claims, whether due; not due, or contingent, and whether liquidated or unliquidated, shall be made in the manner and within the time prescribed in this part.

(b) A claim that is not made as prescribed in this part is barred.

(c) No holder of a claim shall maintain an action on the claim unless first made as prescribed in this part.

Comment. Section 9002 generalizes a portion of the first sentence of former Probate Code Section 707 and a portion of former Probate Code Section 716(a). Section 9002 applies to all claims, whether in contract, tort, or otherwise, including claims for funeral expenses and claims for damages for injuries to or death of a person or injury to property and all claims against the executor or administrator of any testator or intestate who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person. See Section 9000 ("claim" defined).

The requirement that a claim be made as prescribed in this part is subject to exception pursuant to other provisions. See Section 9300 (personal representative may allow claim not made as prescribed in this part). See also Sections [to be drafted] (enforcement of security interest), [to be drafted] (claim covered by insurance).

CROSS-REFERENCES

Definition

Claim § 9000

9003. Payment of claims

9003. A claim that is established pursuant to this part shall be included among the debts to be paid in the course of administration.

Comment. Section 9003 restates the first portion of the first sentence of former Probate Code Section 713 without substantive change. For payment of debts, see Part 9 (commencing with Section 11400).

CROSS-REFERENCES

Definitions

Claim § 9000

CHAPTER 2. NOTICE TO CREDITORS

§ 9050. Notice required

9050. (a) If the personal representative has actual knowledge of a creditor of the decedent before expiration of the time prescribed in Section 9051, the personal representative shall serve notice of administration of the estate of the decedent on the creditor, subject to Section 9054. As used in this section, "creditor" means a person who has demanded payment by the decedent or from the estate.

(b) Service of the notice shall be in addition to publication or posting of the notice of hearing of the petition to administer the decedent's estate pursuant to Chapter 2 (commencing with Section 8100) of Part 2.

Comment. Section 9050 is new. It is designed to satisfy due process requirements by ensuring reasonable notice to creditors within the practicalities of administration of the estate of a decedent.

The personal representative is not required to make a search for possible creditors pursuant to this section or to serve persons who are potentially creditors because of possible liability of the decedent. The personal representative is required only to serve actual creditors who are known to the personal representative either because the personal representative becomes aware of the obligation in the course of administration or otherwise or because the creditor has demanded payment during administration. In a case where there is doubt whether notice to a particular person is required under this standard, the personal representative should err on the side of giving notice. The personal representative is protected from liability in this event. Section 9053 (immunity of personal representative and attorney).

The purpose of the notice is to alert creditors to the need to make a formal claim. For this reason, the personal representative need not give notice to a creditor who makes a formal claim or to a creditor

whose demand for payment the personal representative elects to allow as a claim notwithstanding failure to comply with formal claim requirements. Section 9054 (when notice not required).

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. The provision governing the petition for final distribution may require the personal representative to include a declaration that the personal representative has given the notice required by this chapter.

§ 9051. Time of notice

9051. The notice shall be served and proof of service filed within four months after letters are first issued to a general personal representative.

Comment. Under Section 9051, if letters are issued by more than one court or if subsequent letters are issued by the same court, notice must be served within four months after the first issuance of letters to a general personal representative.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 9052. Form of notice

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____

To creditors of _____:

Letters have been issued dated _____ in Estate No. _____ by the Superior Court of California, County of _____, for the administration of the estate of the decedent. You must file your claim with the court within the later of four months from the date of issuance of the letters or 30 days from the date of mailing or delivery of this notice, as provided in Section 9100 of the California Estate and Trust Code.

(Name and address of personal
representative or attorney)

PROOF OF SERVICE

I served a copy of the above notice on _____ (person) by one of the following means (check appropriate space):

_____ personally delivering the copy to the person served at:

1. _____ (date) 2. _____ (time) 3. _____ (address)

_____ placing the copy in the United States mail, in a sealed envelope with postage fully prepaid at:

1. _____ (date) 2. _____ (place) 3. _____ (mailing address)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ (date) _____ (type or print name) _____ (signature)

CROSS-REFERENCES

Judicial Council authority § 7201

§ 9053. Immunity of personal representative and attorney

9053. If the personal representative or attorney reasonably believes notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, neither the personal representative nor the attorney is liable for giving the notice whether or not required by this chapter.

Comment. Section 9053 is intended to encourage full and adequate notice in cases where it is a close question whether a personal representative has actual knowledge of a creditor within the meaning of Section 9050. If, for example, the personal representative reasonably believes that notice may be required and if the notice given generates claims or litigation that would not otherwise have arisen, Section 9053 immunizes the personal representative from liability even though notice turns out not to have been legally required.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 9054. When notice not required

9054. Notwithstanding Section 9050, the personal representative need not serve notice on a creditor actually known to the personal representative in any of the following cases:

(a) The creditor has made a claim as prescribed in this part.

(b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim pursuant to Section 9153.

Comment. Section 9054 eliminates the need for notice to a creditor who has made a satisfactory claim in the administration proceeding. The personal representative may waive formal defects in a demand for payment made during the four month claim period and accept the demand as a statutory claim, thereby avoiding the need for additional service of notice on the creditor. Section 9153.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

CHAPTER 3. TIME FOR MAKING CLAIMS

§ 9100. Claim period

9100. (a) A creditor shall make a claim within the later of the following times:

(1) Four months after letters are first issued to a general personal representative.

(2) Thirty days after service of notice or other receipt of actual knowledge of the administration of the estate of the decedent.

(b) In no event may a creditor make a claim after the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative, whichever occurs first.

Comment. Section 9100 supersedes the last portion of subdivision (a) and subdivision (c) of former Probate Code Section 700 and portions of former Probate Code Sections 704.2 and 704.4.

If letters are issued by more than one court or if subsequent letters are issued by the same court, the four month period of subdivision (a)(1) commences on the first issuance of letters to a general personal representative. In the case of a special administrator granted the powers of a general personal representative, the claim period commences to run upon first issuance of letters reciting the general powers of the special administrator.

The notice referred to in subdivision (a)(2) is prescribed in Chapter 2 (commencing with Section 9050) (notice to creditors).

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Note. The statute governing appointment of a special administrator with powers of a general personal representative will be revised to ensure that notice is published in connection with the appointment.

§ 9101. Time not extended by vacancy in office

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for making a claim does not extend the time.

Comment. Section 9101 restates former Probate Code Section 700(b) without substantive change. A vacancy occurs when the personal representative resigns, dies, or is removed from office. Section 8520 (vacancy in office).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9102. Where personal representative acts on claim after expiration of time

9102. A claim that is made before expiration of the time for making the claim is timely made even though acted upon by the personal representative or by the court after expiration of the time.

Comment. Section 9102 restates the last sentence of former Probate Code Section 712 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9103. Late claims

9103. (a) A claim may be made at any time within one year after the time prescribed in Section 9100 and before an order for final distribution has been made if it appears to the satisfaction of the court that any of the following conditions is satisfied:

(1) The claimant was out of the state during the entire period prescribed in Section 9100 and did not receive notice. This paragraph does not apply to a business claimant who does business in the state.

(2) The claimant in good faith filed a claim in another proceeding for the same decedent that is not consolidated with the present proceeding and in which letters are not issued.

(b) Property distributed pursuant to court order and payments properly made before a claim is made pursuant to this section are not subject to the claim, regardless whether the claim is later established in whole or in part.

Comment. Section 9103 restates the second and third sentences of former Probate Code Section 707(a), but limits subdivision (a)(1) to nonbusiness claimants who were out of state during the entire claim period.

CROSS-REFERENCES

Definitions

Claim § 9000
Letters § 52
Property § 62

Note. Subdivision (b) may be relocated among general provisions on the effect of distribution and statutes of limitations, and will be made consistent with the general provisions on the effect of a preliminary distribution.

§ 9104. Amendment or revision of claim

9104. If a claim is made within the time prescribed in Section 9100, the creditor may thereafter make an amendment or revision of the claim, but a creditor may not make an amendment or revision after the earlier of the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative.

Comment. Section 9104 is new.

CROSS-REFERENCES

Definitions

Claim § 9000
Letters § 52
Personal representative § 58

CHAPTER 4. MAKING OF CLAIMS

§ 9150. How claim is made

9150. (a) A claim is made by filing the claim in the office of the clerk. The clerk shall notify the attorney of record or, if none, the personal representative, if a claim is made.

(b) A claim may be made by the claimant or a person in behalf of the claimant.

Comment. Subdivision (a) of Section 9150 supersedes former Probate Code Section 700(a). Notification by the clerk may be of an individual claims or that a number of claims have been filed. Subdivision (a) does not specify the manner of notification, which may be by mail (e.g., post card).

Subdivision (b) generalizes a provision of former Probate Code Section 704.2. A person acting in behalf of the claimant may include the personal representative or the guardian or conservator of the estate of the claimant.

CROSS-REFERENCES

Definitions

Claim § 9000
Person § 56
Personal representative § 58

§ 9151. Documentary support of claim

9151. (a) A claim shall be supported by the affidavit of the claimant or a person in behalf of the claimant stating:

(1) If the claim is due, that the amount is justly due, that no payments have been made on the claim that are not credited, and that there are no offsets to the claim.

(2) If the claim is not due, or is contingent, the particulars of the claim.

(3) If the affidavit is made by a person other than the claimant, the reason therefor.

(b) The personal representative may require satisfactory vouchers or proof to be produced in support of the claim. If the claimant includes with the claim an original voucher, the claimant may withdraw the voucher after a copy is attached to the claim.

Comment. Section 9151 restates Probate Code Section 705 without substantive change. The claim may be supported by a declaration under penalty of perjury in lieu of an affidavit. Code Civ. Proc. § 2015.5. The affidavit may be made on information and belief. Cf. Code Civ. Proc. § 446.

CROSS-REFERENCES

Definitions

Claim § 9000
Person § 56
Personal representative § 58

§ 9152. Claim based on written instrument

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court on demand unless it is lost or destroyed, in which case its loss or destruction shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

Comment. Section 9152 restates former Probate Code Section 706 without substantive change.

CROSS-REFERENCES

Actions in chambers § 7061
Definitions
Claim § 9000
Personal representative § 58
Enforcement of security interest § 9151

§ 9153. Waiver of formal defects

9153. Notwithstanding any other provision of this part, if a creditor demands payment within the time prescribed in Section 9100 and the amount demanded does not exceed \$500, the personal representative may waive formal defects and elect to treat the demand as a claim by paying the amount demanded within the time prescribed in Section 9100.

Comment. Section 9153 is new. It authorizes the personal representative to waive technical claim requirements such as the form and manner of making a claim if the amount demanded is less than \$500. This may be appropriate, for example, for regular bills received by the personal representative in the ordinary course of business concerning which there is no dispute. This authority enables the personal representative to avoid the need for additional service of notice on the creditor. Section 9054 (when notice not required). For approval of the personal representative's account where payment is made without prior court order, see Sections 11422 (payment of debts on court order) and [929] (to be drafted).

CROSS-REFERENCES

Definitions
Claim § 9000
Personal representative § 58

CHAPTER 5. CLAIMS BY SURVIVING SPOUSE

§ 9200. Claim by surviving spouse for payment of debt of decedent

9200. (a) The surviving spouse may make a claim for payment of a debt of the deceased spouse to the extent the surviving spouse is personally liable for the debt pursuant to Section 13550.

(b) The claim shall include all of the following:

(1) The reason the debt is not barred by Section 13552.

(2) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(3) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens and encumbrances upon the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 9200 restates former Probate Code Section 704.2, except that the claim may not be made after the order for final distribution and may be required to be made earlier. Section 9100 (claim period).

CROSS-REFERENCES

Definitions

Claim § 9000

Community property § 28

Property § 62

Quasi-community property § 66

Surviving spouse § 78

§ 9201. Claim by surviving spouse for payment of debt of surviving spouse

9201. (a) The surviving spouse may make a claim for the payment of a debt of the surviving spouse for which property administered in the estate is liable.

(b) The claim shall include all of the following:

(1) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(2) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens and encumbrances upon the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 9201 restates former Probate Code Section 704.4 and broadens it consistent with general principles of liability of marital property for debts. See Civil Code §§ 5120.010-5122. The claim may not be made after the order for final distribution and may be required to be made earlier. Section 9100 (claim period).

CROSS-REFERENCES

Definitions

Claim § 9000
Community property § 28
Property § 62
Quasi-community property § 66
Surviving spouse § 78

§ 9202. Treatment of claim of surviving spouse

9202. (a) A claim of the surviving spouse made pursuant to this article shall be allowed in the proportion allocated to the estate pursuant to Chapter 3 (commencing with Section 11440) of Part 9.

(b) The claim may be discharged by any of the following means:

(1) Payment to the surviving spouse.

(2) Payment to the creditors of the surviving spouse or deceased spouse as identified in the claim.

(3) A credit allowed the spouse in the order allocating debts made pursuant to Chapter 3 (commencing with Section 11440) of Part 9.

Comment. Section 9202 continues former Probate Code Section 713.5 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000
Surviving spouse § 78

CHAPTER 6. CLAIMS BY PUBLIC ENTITIES

§ 9250. Claim by public entity required

9250. (a) Except as otherwise provided in this chapter, a claim by a public entity shall be made within the time prescribed in this part. Any claim not so made is barred, including any lien imposed for the claim.

(b) As used in this section, "public entity" has the meaning provided in Section 811.2 of the Government Code.

Comment. Section 9250 restates former Probate Code Section 707.5(a) without substantive change. "Public entity" is defined in Government Code Section 811.2 to include the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. This section does not govern obligations owed to the United States.

CROSS-REFERENCES

Definitions

Claim § 9000

§ 9251. Claims governed by other statutes

9251. (a) A claim arising under a statute listed in subdivision (b) is barred only after written notice or request to the agency and expiration of the period provided in the applicable statute. If no written notice or request is made the claim is barred at the time otherwise provided in the statute.

(b)	Law or Code	Applicable Statute
	Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Bradley-Burns Uniform Local Sales and Use Tax law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
	Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
	Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
	Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
	Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code

Unemployment Insurance
Code

Section 1090 of the
Unemployment Insurance
Code

Welfare and Institutions
Code

Section 7277.1 of the
Welfare and Institutions
Code

Comment. Section 9251 continues former Probate Code Section 707.5(b) without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Note. This section may require revision in light of AB 2687 and SB 2594 (1986) or other legislative enactments. This section may also be revised to incorporate the provisions concerning actual notice to creditors, after the staff consults with the state agencies affected. This section and other special notice provisions will be cross-referenced in the general statutes on notice.

§ 9252. Limitation on application of chapter

9252. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect claim or representation, or a forged or unauthorized endorsement.

Comment. Section 9252 continues former Probate Code Section 707.5(e) without substantive change.

§ 9253. Priority of claims not affected by chapter

9253. Except as provided in Section 9254, nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

Comment. Section 9253 continues former Probate Code Section 707.5(d) without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

§ 9254. Claim by Director of Health Services

9254. (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of

Division 9 of the Welfare and Institutions Code, a beneficiary, the personal representative, or a person in possession of property of the decedent shall give the Director of Health Services notice of the decedent's death no later than 90 days after the date of death. The notice shall be given by mail addressed to the director at the Sacramento office of the director.

(b) A notice given pursuant to this section shall include a copy of the decedent's death certificate.

(c) The director has four months after notice is given in which to make a claim. If assets of the estate have been distributed, the director is entitled to a claim against the distributees to the full extent of the director's claim, or each distributee's share of the distributed assets, whichever is less. The director's entitlement against distributees shall include interest at a rate equal to that earned in the Pooled Money Investment Fund from the date of distribution or the date of making the claim by the director, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

(d) Failure to comply with the provisions of this section does not affect the validity of any proceeding under this division.

Comment. Section 9254 restates former Section 700.1 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Claim § 9000
Personal representative § 58
Property § 62
Mailing § 7150

Note. This section may require revision in light of AB 2687 and SB 2594 (1986) or other legislative enactments. This section may also be revised to incorporate the provisions concerning actual notice to creditors, after the staff consults with the state agencies affected. This section and other special notice provisions will be cross-referenced in the general statutes on notice.

CHAPTER 7. ALLOWANCE AND REJECTION OF CLAIMS

§ 9300. Procedure by personal representative

9300. (a) Upon notification that a claim has been made, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the clerk and serve a copy on the claimant.

(c) The allowance or rejection shall contain the following information:

- (1) Name of claimant.
- (2) Total amount of claim.
- (3) Date of issuance of letters.
- (4) Date of death.
- (5) Estimated value of estate.
- (6) Amount allowed or rejected by personal representative.
- (7) Whether personal representative is authorized to act under the Independent Administration of Estates Act.
- (8) A statement that the claimant has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

Comment. Section 9300 supersedes portions of former Probate Code Sections 710, 711, and 714. Under Independent Administration of Estates the personal representative may allow, pay, reject, contest, or compromise any claim without court supervision. Section 10502(k) (specific independent administration powers). However, court supervision is necessary where the personal representative is the creditor. Section 9302.

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Independent Administration of Estates Act § 10400 et seq.

§ 9301. Procedure by court

9301. If the personal representative is not authorized to act under the Independent Administration of Estates Act:

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court for approval or rejection.

(b) On presentation of a claim and allowance to the court, the court may, in its discretion, examine the claimant and others on oath and receive any evidence touching the validity of the claim. The court shall indorse approval or rejection on the claim, and the date of the approval or rejection.

Comment. Section 9301 supersedes portions of former Probate Code Sections 708, 710, 711, and 713.

CROSS-REFERENCES

Actions at chambers § 7123

Definitions

Claim § 9000

Personal representative § 58

Independent Administration of Estates Act § 10400 et seq.

Register of actions and preservation of records, Gov't Code §§ 69845-6

§ 9302. Where personal representative is creditor

9302. (a) If the personal representative is a creditor of the decedent, the clerk shall present the claim to the court for approval or rejection.

(b) If the court approves the claim, the claim shall be paid in the course of administration.

(c) If the court rejects the claim, the personal representative may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

Comment. Section 9302 restates former Probate Code Section 703 without substantive change. An approved claim is paid as other claims in the course of administration. If the personal representative fails to recover on an action, the personal representative must pay all costs, including reasonable attorney's fees, to be fixed by the court. Section 9307 (action on rejected claim).

CROSS-REFERENCES

Actions in chambers § 7061

Definitions

Claim § 9000

Personal representative § 58

§ 9303. Effect of statute of limitations

9303. (a) The making of a claim does not toll the statute of limitations otherwise applicable to the claim except during the time prescribed in Section 9306.

(b) A claim barred by the statute of limitations otherwise applicable to the claim may not be allowed by the personal representative or approved by the court.

(c) The allowance of a claim by the personal representative or approval by the court tolls the statute of limitations otherwise applicable to the claim during the administration of the estate.

Comment. Subdivision (a) of Section 9303 codifies existing case law. See, e.g., *Nally v. McDonald*, 66 Cal. 530, 6 P. 390 (1885). Subdivisions (b) and (c) restate the first and third sentences of former Probate Code Section 708 without substantive change.

CROSS-REFERENCES

Actions at chambers § 7123

Definitions

Claim § 9000

Personal representative § 58

§ 9304. Allowed and approved claims

9304. The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the account of the personal representative in which it is first reported as an allowed or approved claim. This section does not apply to a claim established by a judgment.

Comment. Section 9304 restates a portion of the first sentence of former Section 713 without substantive change. For claims established by judgments, see Chapter 8 (commencing with Section 9350).

CROSS-REFERENCES

Definitions

Claim § 9000

Interested person § 48

Personal representative § 58

§ 9305. Partial allowance

9305. (a) The personal representative may allow a claim, or the court may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A claimant who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner prescribed in Section 9307. The claimant may not recover costs in the action unless the claimant recovers an amount greater than that allowed or approved.

Comment. Section 9305 continues former Probate Code Section 717 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9306. Failure of personal representative or court to act

9306. If within 30 days after a claim is made the personal representative or court has refused or neglected to act on the claim, the refusal or neglect may, at the option of the claimant, be deemed equivalent to service of notice of a rejection on the 30th day.

Comment. Section 9306 supersedes the first sentence of former Probate Code Section 712. Section 9306 substitutes a 30-day period for the 10-day period formerly provided. For tolling of the statutory period, see Section 9303 (effect of statute of limitations).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9307. Action on rejected claim

9307. (a) A rejected claim is barred unless the claimant brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the date of service of the notice of rejection, three months after the date of service.

(2) If the claim is not due at the date of service of the notice of rejection, three months after the claim becomes due.

(b) An action on the claim shall be brought in the county in which the proceeding for administration of the decedent's estate is pending.

(c) Within 10 days after the complaint is filed the plaintiff shall file a notice of the pendency of the action with the clerk in the estate proceedings, together with proof of mailing a copy of the notice to the personal representative. Personal service of a copy of the summons and complaint upon the personal representative within the 10 day period is equivalent to the filing of the notice. Any property distributed pursuant to court order or any payment properly made before the notice is filed and mailed is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(d) If the claimant fails to recover, the claimant shall pay court costs and, in the court's discretion, reasonable litigation expenses (including attorney's fees).

Comment. Subdivisions (a) and (c) of Section 9307 restate a portion of the first sentence and the second, third, and fourth sentences of former Probate Code Section 714 and of former Probate Code Section 715, except that the time after which an action on a rejected claim that is not yet due must be brought is increased from two months to three months. In the case of an action on a rejected claim, or the fact that the time within which such an action must be brought has not expired, does not preclude closing estate administration where the amount in dispute is paid into court. See Section 11427 (trust for installment or contingent debt).

Subdivision (b) is new; the superior court sitting in probate has concurrent jurisdiction over an action on a creditor's claim. Section 7050 (jurisdiction in superior court).

Subdivision (d) generalizes a provision of former Probate Code Section 703.

A dispute over a claim may be submitted to a temporary judge or to arbitration pursuant to (summary determination of disputes).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Jurisdiction in superior court § 7050

Submission of dispute to arbitration § 9621

Submission of dispute to temporary judge § 9620

CHAPTER 8. CLAIMS ESTABLISHED BY JUDGMENT

§ 9350. Money judgment against decedent

9350. (a) Subject to Section 9353, after the death of the decedent the following money judgments are payable in the course of administration and are not enforceable against the estate of the decedent under the Enforcement of Judgments Act:

(1) A money judgment against the decedent during the decedent's lifetime.

(2) A money judgment against a decedent who died after trial and submission of the case to a judge sitting without a jury for decision or after a verdict.

(3) A money judgment against the personal representative on a claim against the estate of the decedent.

(b) Except as provided in Section 9351, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

Comment. Section 9350 continues former Probate Code Section 730(a)-(b) without substantive change. For an exception to the rule of Section 9350, see Section 9353. Section 9350 applies to federal as well as state judgments.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9351. Money judgment against personal representative

9351. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

Comment. Section 9351 continues former Probate Code Section 731 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9352. Enforcement of non-money judgment

9352. (a) Notwithstanding the death of the decedent, a judgment for the possession of property or a judgment that requires a sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, a demand for money that is not satisfied from the property described in the judgment for possession or sale shall be made as a claim in the same manner as other claims and is payable in the course of administration.

Comment. Section 9352 continues former Probate Code Section 730(d) without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Property § 62

§ 9353. Property under levy of execution

9353. If property of the decedent is levied upon under the Enforcement of Judgments Law before the decedent dies, enforcement of the property levied upon may proceed under the Enforcement of Judgments Law to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

Comment. Section 9353 restates former Probate Code Section 730(c) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 9354. Converting attachment lien to judgment lien

9354. (a) An attachment lien may be converted into a judgment lien upon property in the estate subject to the attachment lien, with the same priority as the attachment lien, in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien do one of the following:

(1) Serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien on the person holding property pursuant to the attachment.

(2) Record or file in any office where the writ and notice of attachment are recorded or filed an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied upon pursuant to the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of such members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice has been served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

Comment. Section 9354 continues former Probate Code Section 732 without substantive change.

CROSS-REFERENCES

Definitions

- Person § 56
- Personal representative § 58
- Property § 62
- Real property § 68

CHAPTER 9. CLAIMS IN CIVIL ACTIONS

Note. These provisions will be prepared separately and will be circulated to trial lawyer and defense lawyer groups particularly soliciting comments on the existing and proposed statutory schemes, how they work or would work in practice, and whether they are amenable to simplification or improvement.

PART 9. PAYMENT OF DEBTS

CHAPTER 1. DEFINITIONS

§ 11400. Application of definitions

11400. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

§ 11401. Debt

11401. "Debt" means:

(a) A claim that is established pursuant to Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

Comment. Section 11401 is new. It is intended for drafting convenience.

Subdivision (a) includes debts payable under the Independent Administration of Estates Act that are not established pursuant to Section 9000 et seq. (creditor claims), as well as other debts paid even though not presented through the formal claim procedure. See Sections and 11422 (payment of demands on court order).

CROSS-REFERENCES

Definitions

Claim § 9000

Family allowance § 38

§ 11402. Wage claim

11402. "Wage claim" means a claim for wages, to the extent of two thousand dollars (\$2,000), of each employee of the decedent for work done or personal services rendered within 90 days before the death of the decedent.

Comment. Section 11402 restates former Probate Code Section 950(6) and a portion of former Probate Code Section 951, and increases the amount from \$900 to \$2,000.

CROSS-REFERENCES

Definitions

Claim § 9000

CHAPTER 2. GENERAL PROVISIONS

§ 11420. Priority for payment

11420. (a) Debts shall be paid in the following order of priority among classes of debt:

- (1) Expenses of administration.
- (2) Funeral expenses.
- (3) Expenses of last illness.
- (4) Family allowance.
- (5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including but not limited to a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

- (7) General debts.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class shall be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

(c) Notwithstanding any other provision of this chapter, debts having preference by the laws of the United States or of this state shall be given the preference required by such laws.

Comment. Section 11420 restates former Probate Code Section 950 and a portion of former Probate Code Section 952, except that Section 11420 makes clear that United States and California preferred debts must be recognized to the extent required by law. Subdivision (a)(7) includes judgments that are not liens rendered against the decedent during lifetime. See Section 9350 (claims established by judgment).

CROSS-REFERENCES

Definitions

Debt § 11401
Family allowance § 38
Property § 62
Wage claim § 11402

Note. Subdivision (a)(6) is subject to review in connection with other provisions on encumbrances of estate property.

Probate Code Section 6170 provides that absent a contrary direction in a will, a specific devise of property passes the property subject to any mortgage, deed of trust, or other lien.

§ 11421. Immediate payment of priority debts

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration and debts having preference by the laws of the United States or of this state, the personal representative shall pay the following debts:

- (a) Funeral expenses.
- (b) Expenses of last illness.
- (c) Family allowance.
- (d) Wage claims.

Comment. Section 11421 restates the first portion of former Probate Code Section 951, with the addition of the reference to other debts given preference by federal or state law. See, e.g., Estate of Muldoon, 128 Cal. App. 2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal. App. 2d 152, 142 P.2d 454 (1943) (state preference). Section 11421 is an exception to the rule of Section 11422 (payment of debts on court order) in that payment under Section 11421 is required even though the court has not ordered payment.

CROSS-REFERENCES

Definitions

Debt § 11401
Family allowance § 38
Personal representative § 58
Wage claim § 11402

§ 11422. Payment of debts on court order

11422. (a) Except as provided in Section 11421 (immediate payment of priority debts), the personal representative is not required to pay a debt until payment has been ordered by the court.

(b) Upon the settlement of any account of the personal representative after the time prescribed in Section 9100 (claim period) has expired, the court shall order payment of debts, as the circumstances of the estate permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid each.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt without payment having been previously ordered by the court.

Comment. Subdivision (a) of Section 11422 restates the last portion of former Probate Code Section 951 without substantive change. Subdivisions (b) and (c) restate the first, second, and fourth sentences of former Probate Code Section 952. Subdivision (d) is new.

Section 11422 makes clear that the notice of hearing of an account that will result in the estate being exhausted must comply with the requirements for notice of hearing of a final account. See Section (notice of hearing). Discharge may be obtained by ex parte petition upon filing the appropriate receipts. Section 12250 (order of discharge).

For approval of the personal representative's account where payment is made without prior court order, see Sections 9153 (waiver of formal defects) and [929] (to be drafted).

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

Property § 62

§ 11423. Interest

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and

unpaid at any time when there are sufficient funds, whether the debt is then due or not.

Comment. Section 11423 supersedes former Probate Code Section 733. The legal rate of interest on judgments is provided in Code of Civil Procedure Section 685.010.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11424. Enforcement of order for payment

11424. (a) The personal representative shall pay a debt to the extent of the order for payment of the debt.

(b) An order for payment of a debt may be enforced in the manner provided for the enforcement of a money judgment generally.

Comment. Section 11424 restates former Probate Code Section 954. The personal representative is liable personally and on the bond for failure to make payment ordered by the court. See Section (general provision on liability of personal representative). For provisions on abatement of devises, see Sections

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11425. Disputed and contingent debts

11425. Except as otherwise provided in this part, if a debt is not due, or is contingent or disputed, the amount of the debt or the part that would be payable if the debt were due, established, or absolute, shall be paid into court. The amount paid into court shall remain there, to be paid over to the creditor when the debt is due, established, or absolute or, if the debt is not established, to be paid over or distributed as the circumstances of the estate require.

Comment. Section 11425 restates the first sentence of former Probate Code Section 953 without substantive change. Payment into court pursuant to this section is subject to the general provisions of Section 11420 relating to order of payment; if the estate is insolvent, payment may not be made pursuant to this section unless

payment of proportionate shares is ordered. For other provisions relating to payment of installment and contingent debts and debts not yet due, see Sections 11426 (payment of debt not yet due) and 11427 (trust for installment or contingent debt).

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11426. Payment of debt not due

11426. If a creditor whose debt is not due assents to a deduction from the debt of the legal interest for the time until the debt is due, the creditor is entitled to payment of the debt.

Comment. Section 11426 restates the second sentence of former Probate Code Section 953 without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11427. Trust for installment or contingent debt

11427. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is payable in installments or upon the occurrence or nonoccurrence of a stated event shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate upon the amount to be invested.

(d) The trustee shall pay the debt as ordered by the court. Upon completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

Comment. Section 11427 restates former Probate Code Section 953.1, omitting the transitional provision, which is no longer necessary, and authorizing investments that would be proper for a personal representative rather than for a savings bank.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11428. Deposit with county treasurer

11428. (a) Whenever an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, upon affidavit or evidence taken in open court, that a debt has not been and cannot be paid because the creditor cannot be found, the court shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceedings are pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 11428 restates former Probate Code Section 738 without substantive change. The amount of the deposit pursuant to this section includes interest on the debt from the date payment was ordered. Section 11423 (interest).

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Debt § 11401

Personal representative § 58

Note. This material will be circulated to the State Treasurer and county treasurers for review.

§ 11429. Omitted creditor

11429. (a) When the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor whose debt was not included in the order for payment has no right to require creditors who have been paid or distributees to contribute to the payment of the debt.

(b) Nothing in this section precludes recovery by a creditor whose debt was not included in the order for payment against the personal representative on the bond or otherwise.

Comment. Section 11429 supersedes former Probate Code Section 955.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

§ 11440. When allocation may be made

11440. If it appears that a debt of the decedent is also payable in whole or in part by the surviving spouse, the personal representative or any interested person may petition for an order to allocate responsibility for the debt at any time before an order for final distribution is made.

Comment. Section 11440 restates former Probate Code Section 980(a) without substantive change, but allows the petition to be made at any time before the court order for final distribution. Under this section a petition may be made by a creditor of the surviving spouse in a case where the estate is also liable for the debt. See Section 48 ("interested person" defined).

CROSS-REFERENCES

Definitions

Debt § 11401

Interested person § 48

Personal representative § 58

Surviving spouse § 78

§ 11441. Petition for allocation

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent known to the petitioner that are alleged to be subject to allocation.

(b) The reason why the debts of the decedent should be allocated.

(c) The allocation and the basis for allocation alleged by the petitioner.

Comment. Section 11441 restates former Probate Code Section 980(b) without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11442. Inventory of property of surviving spouse

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

Comment. Section 11442 restates former Probate Code Section 980(c) without substantive change.

CROSS-REFERENCES

Definitions

Community property § 28

Property § 62

Quasi-community property § 66

Surviving spouse § 78

§ 11443. Notice of hearing

11443. Notice of the hearing of the petition and the order to show cause shall be given for the period and in the manner prescribed by [Section 1200] and a copy of the petition and the order to show cause shall be served upon the surviving spouse and the personal representative not less than 10 days before the time set for the hearing.

Comment. Section 11443 restates former Probate Code Section 980(d) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Surviving spouse § 78

Notice not required to be given to person giving notice § 7307

Note. Notice provisions are subject to further review.

§ 11444. Allocation

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, upon a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the responsibility to pay the debt shall be allocated accordingly.

Comment. Section 11444 restates former Probate Code Section 980(e) without substantive change. Section 11444 makes clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. See Civil Code Sections 5120.010-5122.

CROSS-REFERENCES

Definitions

- Debt § 11401
- Interested person § 48
- Personal representative § 58
- Property § 62
- Surviving spouse § 78

§ 11445. Order implementing allocation

11445. Upon making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to charge the amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession of the personal representative.

(b) Summarily directs the surviving spouse to make payment of the allocation to the personal representative to the extent that property or interests of the surviving spouse that are in the possession of the personal representative are insufficient to satisfy the allocation.

(c) Directs the personal representative to make payment of the amounts allocated to the estate.

Comment. Section 11445 restates former Section Probate Code 980(f) without substantive change.

GROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Surviving spouse § 78

§ 11446. Funeral expenses and last illness expenses

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of a deceased spouse and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

Comment. Section 11446 restates former Probate Code Section 951.1 without substantive change.

GROSS-REFERENCES

Definitions

Person § 56
Surviving spouse § 78

DISPOSITION OF REPEALED SECTIONS

CHAPTER 12. PRESENTATION AND PAYMENT OF CLAIMS

ARTICLE 1. PRESENTATION

Probate Code § 700 (repealed)

Comment. Subdivision (a) of former Section 700 is superseded by Estate and Trust Code Sections 9001 (notice to creditors), 9100 (claim period), 9150 (how claim is made), and 58 ("personal representative" defined). Subdivision (b) is restated in Estate and Trust Code Section 9101 (time not extended by vacancy in office) without substantive change. Subdivision (c) is restated in Estate and Trust Code Section 9100 (claim period) without substantive change.

Probate Code § 700.1 (repealed)

Comment. Former Section 700.1 is restated in Estate and Trust Code Sections 9254 (claim by Director of Health Services) and 7150 (mailing) without substantive change.

Probate Code § 703 (repealed)

Comment. Former Section 703 is restated in Estate and Trust Code Sections 9302 (where personal representative is creditor) and 9307 (action on rejected claim) without substantive change.

Probate Code § 704 (repealed)

Comment. Former Section 704 is not continued. A judge who is a creditor is disqualified. Estate and Trust Code Section 7062 (disqualification of judge).

Probate Code § 704.2 (repealed)

Comment. Former Section 704.2 is restated in part in Estate and Trust Code Sections 9200 (claim by surviving spouse for payment of debts of decedent) and 9150 (how claim is made) without substantive change, and is superseded in part by Estate and Trust Code Section 9100 (claim period).

Probate Code § 704.4 (repealed)

Comment. Former Section 704.4 is restated in part in Estate and Trust Code Section 9201 (claim by surviving spouse for payment of debt of surviving spouse) and broadened for consistency with general principles of liability of marital property for debts, and is superseded in part by Estate and Trust Code Section 9100 (claim period).

Probate Code § 705 (repealed)

Comment. Former Section 705 is restated in Section 9151 (documentary support of claim) without substantive change.

Probate Code § 706 (repealed)

Comment. Former Section 706 is restated in Section 9152 (claim founded upon written instrument) without substantive change.

Probate Code § 707 (repealed)

Comment. The first sentence of subdivision (a) of former Section 707 is continued in Estate and Trust Code Sections 9000 ("claim" defined) and 9002 (claim requirement) without substantive change. See also Estate and Trust Code Section 9100 (claim period). The substance of the second sentence is continued in Estate and Trust Code Sections 9002(b) (claim requirement) and 9103 (late claims). The remainder of subdivision (a) is restated and limited in Estate and Trust Code Section 9103 (late claims), except for the last sentence, which is not continued. See Gov't Code §§ 69845-6 (register of actions, preservation of records).

Subdivision (b) is superseded by Estate and Trust Code Section (claim covered by insurance).

Probate Code § 707.5 (repealed)

Comment. Subdivision (a) of former Section 707.5 is restated in Estate and Trust Code Section 9250 (claim by public entity required) without substantive change. Subdivision (b) is continued in Estate and Trust Code Section 9251 (claims governed by other statutes) without substantive change. Subdivision (c) is restated in Estate and Trust Code Section 9000(a) ("claim" defined) without substantive change. Subdivision (d) is continued in Estate and Trust Code Section 9253 (priority of claims not affected by chapter) without substantive change. Subdivision (e) is continued in Estate and Trust Code Section 9252 (limitation on application of chapter) without substantive change.

Probate Code § 708 (repealed)

Comment. The first sentence of former Section 708 is restated in Estate and Trust Code Section 9303(b) (effect of statute of limitations) without substantive change. The second sentence is restated in Estate and Trust Code Section 9301(b) (procedure by court) without substantive change. The third sentence is restated in Estate and Trust Code Section 9303(c) (effect of statute of limitations) without substantive change.

Probate Code § 709 (repealed)

Comment. Former Section 709 is restated in Estate and Trust Code Sections (claim involving pending action) and (claim covered by insurance).

Probate Code § 709.1 (repealed)

Comment. Former Section 709.1 is superseded by Estate and Trust Code Section (claim covered by insurance).

Probate Code § 710 (repealed)

Comment. The first two sentences of former Section 710 are not continued. The third sentence is superseded by Estate and Trust Code Section 9300 (procedure by personal representative). The last two sentences are superseded by Estate and Trust Code Section 9301 (procedure by court).

Probate Code § 711 (repealed)

Comment. The first sentence of former Section 711 is superseded by Estate and Trust Code Section 9300 (procedure by personal representative). The second sentence is superseded by Estate and Trust Code Section 9301 (procedure by court).

Probate Code § 712 (repealed)

Comment. The first sentence of former Section 712 is superseded by Estate and Trust Code Section 9306 (failure of personal representative or court to act). The second sentence is not continued; the procedure was not used. The last sentence is restated in Section 9102 (where personal representative acts on claim after expiration of time) without substantive change.

Probate Code § 713 (repealed)

Comment. The first sentence of former Section 713 is restated in Estate and Trust Code Sections 9003 (payment of claims) and 9304 (allowed and approved claims). The second sentence is not continued. See Gov't Code §§ 69845-6 (register of actions, preservation of records).

Probate Code § 713.5 (repealed)

Comment. Former Section 713.5 is continued in Estate and Trust Code Section 9202 (treatment of claim of surviving spouse) without substantive change.

Probate Code § 714 (repealed)

Comment. The first sentence of former Section 714 is superseded by Estate and Trust Code Section 9300 (procedure by personal representative). The substance of a portion of the first sentence and the second, third, and fourth sentences is restated in Estate and Trust Code Section 9307 (action on rejected claim). The fifth sentence is not continued).

Probate Code § 715 (repealed)

Comment. Former Section 715 is restated in Estate and Trust Code Section 9307(a) (action on rejected claim).

Probate Code § 716 (repealed)

Comment. Subdivision (a) of former Section 716 is restated in Estate and Trust Code Sections 9002 (claim requirement) and 9150 (how claim is made). The substance of subdivisions (b) and (c) is restated in Estate and Trust Code Section (enforcement of security interest).

Probate Code § 717 (repealed)

Comment. Former Section 717 is continued in Estate and Trust Code Section 9305 (partial allowance) without substantive change.

Probate Code § 718 (repealed)

Comment. Subdivision (1) of former Section 718 is not continued. Subdivision (2) is superseded by Estate and Trust Code Section (estate management).

§ 718.5. Compromise of claims and actions

Comment. The portion of the first sentence of former Probate Code Section 718.5 relating to compromises or settlements after the time for filing creditor's claims has expired is replaced by Estate and Trust Code Section 9830. See the Comment to Estate and Trust Code Section 9830. The portion of the first sentence of former Section 718.5 relating to compromises or settlements before the time for filing creditor's claims has expired is restated in Estate and Trust Code Section 9831 without substantive change.

The second sentence of former Section 718.5 is restated in Estate and Trust Code Section 9837 without substantive change. The requirement that the clerk set the petition for hearing is continued in Estate and Trust Code Section 7202. The requirement that the petition be verified is continued Estate and Trust Code Section 7203.

The last two sentences of former Section 718.5 are replaced by Estate and Trust Code Section 7411.

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§ 718.6 (repealed). Acceptance of deed in lieu of foreclosure or trustee's deed

Comment. Former Probate Code Section 718.6 is continued in Estate and Trust Code Section 9850 without substantive change except that a reference to Estate and Trust Code Section [1200.5], which replaced former Probate Code Section 1200.5, is substituted for the reference in former Probate Code Section 718.6 to former Probate Code Section 1200.

Note. The Comment to Section 718.6 will have to be revised if AB 2625 is enacted.

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§ 718.7 (repealed). Grant of partial satisfaction or partial reconveyance

Comment. Former Probate Code Section 718.7 is continued without substantive change in Estate and Trust Code Section 9851.

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§ 719. Personal representative's liability for costs

Comment. Former Section 719 is not continued. See Est. & Trust Code § [] (costs under Estate and Trust Code); see also Code Civ. Proc. § 1026 (costs in actions by or against fiduciaries).

Probate Code § 720 (repealed)

Comment. Former Section 720 is restated in Estate and Trust Code Section (claim for injury or death not involving pending action) without substantive change.

Probate Code § 721 (repealed)

Comment. Former Section 721, with the exception of subdivision (b), is restated in Estate and Trust Code Section (claim covered by insurance). Subdivision (b) is superseded by the introductory portion of Estate and Trust Code Section

ARTICLE 2. RULES AS TO PAYMENT OF CLAIMS

Probate Code § 730 (repealed)

Comment. Subdivisions (a) and (b) of former Section 730 are continued in Estate and Trust Code Section 9350 (money judgment against decedent) without substantive change. Subdivision (c) is continued in Estate and Trust Code Section 9353 (property under levy of execution) without substantive change. Subdivision (d) is continued in Estate and Trust Code Section 9352 (enforcement of non-money judgment) without substantive change.

Probate Code § 731 (repealed)

Comment. Former Section 731 is continued in Estate and Trust Code Section 9351 (money judgment against personal representative) without substantive change.

Probate Code § 732 (repealed)

Comment. Former Section 732 is continued in Estate and Trust Code Section 9354 (converting attachment lien to judgment lien) without substantive change.

Probate Code § 733 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 736 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 737 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 738 (repealed)

Comment. Former Section 738 is restated in Estate and Trust Code Section 11428 (deposit with county treasurer) without substantive change.

ARTICLE 4. PAYMENT OF DEBTS, EXPENSES, AND CHARGES

Probate Code § 950 (repealed)

Comment. Former Section 950 is restated in Estate and Trust Code Sections 11401 ("debt" defined), 11402 ("wage claim" defined), and 11420 (priority for payment), which increase the amount of a preferred wage claim and make clear that debts given priority by other state law or by federal law retain their priority.

Probate Code § 951 (repealed)

Comment. Former Section 951 is restated in Estate and Trust Code Sections 11402 ("wage claim" defined) and 11421 (immediate payment of priority debts) without substantive change.

Probate Code § 951.1 (repealed)

Comment. Former Section 951.1 is restated in Estate and Trust Code Section 11446 (funeral expenses and last illness expenses), with the addition of a reference to state and federal priorities.

Probate Code § 952 (repealed)

Comment. Former Section 952 is restated in Estate and Trust Code Sections 11420 (order of payment) and 11422 (payment of debts on court order) without substantive change.

Probate Code § 953 (repealed)

Comment. The first sentence of former Section 953 is restated in Estate and Trust Code Section 11425 (disputed and contingent claims) without substantive change. The second sentence is restated in Estate and Trust Code Section 11426 (payment of debt not due) without substantive change. The third sentence is superseded by Estate and Trust Code Section 11420(b) (priority for payment).

Probate Code § 953.1 (repealed)

Comment. Former Section 953.1 is restated in Estate and Trust Code Section 11427 (trust for installment or contingent debt), with the exception of the transitional provision, which is no longer necessary.

Probate Code § 954 (repealed)

Comment. Former Section 954 is restated in Estate and Trust Code Sections 11424 (enforcement of order for payment) and (general provision on liability of personal representative).

Probate Code § 955 (repealed)

Comment. Former Section 955 is superseded by Estate and Trust Code Section 11429 (omitted creditor).

Probate Code § 956 (repealed)

Comment. Former Section 956 is superseded by Chapter 1 (commencing with Section 11600) of Part 10 of Division 7 of the Estate and Trust Code (order for distribution) and Chapter 1 (commencing with Section 12200) of Part 11 of Division 7 of the Estate and Trust Code (time for closing estate).

ARTICLE 4a. PAYMENT OF FEDERAL ESTATE TAX
[Repealed by AB 2625 (1986)]

ARTICLE 5. APPORTIONMENT OF DEBTS

Probate Code § 980 (repealed)

Comment. The first sentence of subdivision (a) of former Section 980 is restated in Estate and Trust Code Section 11440 (when allocation may be made), which allows petition at any time before the order for final distribution is made. The second sentence is superseded by Section 48 ("interested person" defined). Subdivision (b) is restated in Estate and Trust Code Section 11441 (petition for allocation) without substantive change. Subdivision (c) is restated in Estate and Trust Code Section 11442 (inventory of property of surviving spouse) without substantive change. Subdivision (d) is restated in Estate and Trust Code Section 11443 (notice of hearing) without substantive change. Subdivision (e) is restated in Estate and Trust Code Section 11444 (allocation) without substantive change, making clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. Subdivision (f) is restated in Estate and Trust Code Section 11445 (order implementing allocation) without substantive change.