

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1988

**CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739**

THE CALIFORNIA LAW REVISION COMMISSION

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Vice Chairperson

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VICTORIA MATIAS
Word Processing Technician

NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 19 of the Commission's *Reports, Recommendations and Studies* which is scheduled to be published late in 1989.

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SUMMARY OF WORK OF COMMISSION

Recommendations to 1989 Legislative Session

The California Law Revision Commission plans to submit to the 1989 legislative session a number of recommendations relating to probate law and procedure. They will include:

- Compensation of Probate Attorney and Personal Representative
- Notice to Creditors
- No Contest Clauses
- Trustees' Fees

The Commission plans to recommend legislation on the following other matters to the 1989 legislative session:

- Assignment and Sublease
- Creditors' Remedies

The Commission has prepared drafts of other recommendations. These are now being reviewed for possible submission to the 1989 legislative session.

The Commission also plans to recommend legislation to make any needed technical or substantive revisions in legislation recently enacted upon Commission recommendation.

Recommendations Enacted by the 1988 Legislative Session

In 1988, both of the bills recommended by the Commission were enacted. These bills amended 125 sections, added 398 sections, and repealed 312 sections. They effectuated Commission probate law recommendations relating to:

- Opening Estate Administration
- Inventory and Appraisal
- Interest and Income During Administration
- Litigation Involving Decedent
- Abatement
- Accounts
- Distribution and Discharge
- Nondomiciliary Decedents
- Rules of Procedure
- Public Guardians and Administrators

Commission Plans for 1989

During 1989, the Commission plans to prepare a recommendation proposing a new Probate Code.

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

CALIFORNIA LAW REVISION COMMISSION

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SENATOR BILL LOCKYER

ARTHUR K. MARSHALL

TIM PAONE

ANN E. STODDEN

VAUGHN R. WALKER

December 5, 1988

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

In conformity with Government Code Section 8293, the California Law Revision Commission herewith submits this report of its activities during 1988.

Both of the bills introduced in 1988 to implement Commission recommendations were enacted. One bill streamlined, modernized, clarified, and improved various aspects of California probate law. The other bill was an urgency measure that made technical revisions and conforming changes related to Commission recommendations enacted in 1987, which became operative July 1, 1988. Assembly Member Harris authored these measures.

In 1988, the Legislature added an additional topic — the payment and shifting of attorneys' fees between litigants — to the Commission's calendar of topics.

The Commission held one one-day meeting and seven two-day meetings during 1988. Meetings were held in Los Angeles, Sacramento, and San Francisco.

Respectfully Submitted,

Forrest A. Plant
Chairperson

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ANNUAL REPORT FOR THE YEAR 1988

INTRODUCTION

The California Law Revision Commission¹ was created in 1953 as the permanent successor to the Code Commission, with the responsibility for a continuing substantive review of California statutory and decisional law.² The Commission studies California law to discover defects and anachronisms and recommends legislation to make needed reforms.

The Commission assists the Legislature in keeping the law up to date by:

- (1) Intensively studying complex and sometimes controversial subjects;
 - (2) Identifying major policy questions for legislative attention;
 - (3) Gathering the views of interested persons and organizations;
- and
- (4) Drafting recommended legislation for legislative consideration.

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with technical problems in preparing background studies, working out intricate legal problems, and drafting needed legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission consists of:

- A Member of the Senate appointed by the Committee on Rules.
- A Member of the Assembly appointed by the Speaker.
- Seven members appointed by the Governor with the advice and consent of the Senate.
- The Legislative Counsel who is an ex officio member.

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 25 topics.³

1. See Gov't Code §§ 8280-8297 (statute establishing Law Revision Commission).

2. See 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954, at 7 (1957).

3. See list of topics under "Calendar of Topics Authorized for Study" set out in Appendix 1 *infra*.

Commission recommendations have resulted in the enactment of legislation affecting 10,977 sections of the California statutes: 4,936 sections have been added, 2,358 sections amended, and 3,683 sections repealed. Of the 223 Commission recommendations submitted to the Legislature, 207 (93%) have been enacted in whole or in substantial part.⁴

The Commission's recommendations are published in softcover and later are collected in hardcover volumes. A list of past publications and information on obtaining copies is at the end of this Report.

1989 LEGISLATIVE PROGRAM

The Commission is studying and may recommend legislation on the following aspects of probate law to the 1989 Legislature:

- Compensation of probate attorney and personal representative
- Notice to creditors
- No contest clause
- Trustees' fees
- Multiple-party accounts in financial institutions
- Probate filing fees
- 120-hour survival to take title by intestacy
- Uniform Management of Institutional Funds Act

The Commission is studying and may recommend legislation on the following other matters to the 1989 Legislature:

- Assignment and sublease
- Disposition of community property
- Creditors' remedies⁵

The Commission also plans to recommend legislation to make any needed technical or substantive revisions in legislation recently enacted upon Commission recommendation.

4. See list of recommendations and legislative action in Appendix 2 *infra*.

5. See *Recommendation Relating to Creditors' Remedies* (December 1988) (published as Appendix 5 to this Report).

THE PROBATE CODE STUDY

During the last few years, the Commission has been devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is drafting a new Probate Code to replace the existing Probate Code.

The Commission has made substantial progress in preparing the new code. This project has been given the highest priority, and the Commission is planning to prepare and submit a recommendation proposing a new Probate Code in 1989. It is anticipated that a bill to effectuate the recommendation will be a two-year bill to be enacted in 1990.

The Commission is working in close cooperation with the Estate Planning, Trust and Probate Law Section of the State Bar Association, the Probate and Trust Law Section of the Los Angeles County Bar Association, and the Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association. These groups review materials prepared for consideration at Commission meetings, and their representatives regularly attend Commission meetings to advise and assist the Commission.

The Commission has sought and obtained the views of members of the public and of lawyers, judges, court commissioners, probate referees, public administrators, public guardians, realtors, newspaper publishers, and others who work in the probate law field or are concerned with particular aspects of probate law. A special effort has been made to obtain comments and suggestions from the probate and trust law committees of local bar associations, and a number of these local bar groups have submitted comments on tentative drafts even though they do not have representatives present at Commission meetings.

The Commission has retained the following expert consultants to assist the Commission in the probate law study: Professor Paul E. Basye, Hastings College of the Law; Professor Gail Borman Bird, Hastings College of the Law; Professor Jesse Dukeminier, U.C.L.A. Law School; Professor Susan F. French, U.C. Davis School of Law; Professor Edward C. Halbach, Jr., U.C. Berkeley Law School; and Professor Russell D. Niles, Hastings College of the Law.

CALENDAR OF TOPICS FOR STUDY

The Commission's calendar of topics is set out in Appendix 1 to this Report. Each of these topics has been authorized for Commission study by the Legislature.⁶ Because of the number and scope of the topics already on its calendar, the Commission does not at this time recommend any additional topics for Commission study.

AUTHORIZATION TO STUDY AND RECOMMEND LEGISLATION TO CORRECT MINOR OR TECHNICAL DEFECTS IN THE STATUTES

As a general rule, the Law Revision Commission may study only matters referred to it by concurrent resolution of the Legislature.⁷ However, the Commission frequently receives letters pointing out technical and minor substantive defects in the statutes that could and should be easily and simply cured with no significant commitment of Commission resources. The Commission should be authorized to recommend such obvious changes to the Legislature without the delay and expense involved in obtaining a prior concurrent resolution of the Legislature authorizing a Commission study of the matter. The authority of the Commission to study and make recommendations to the Legislature without prior concurrent resolution would be limited to correction of minor or technical defects.

The Commission recommends that the following new section be added to its enabling statute in the Government Code:

8298. The commission may study and recommend revisions to correct minor or technical defects in the statutes of the state, without prior concurrent resolution of the Legislature referring the matter to it for study.

6. Section 8293 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topics which the Legislature by concurrent resolution refers to it for study.

7. Gov't Code § 8293.

FUNCTION AND PROCEDURE OF COMMISSION

The principal duties of the Commission⁸ are to:

(1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws,⁹ bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this state into harmony with modern conditions.¹⁰

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.¹¹

The Commission's work on a recommendation is commenced after a background study has been prepared. The background study may be prepared by a member of the Commission's staff or by a specialist in the field of law involved who is retained as a research consultant. Using expert consultants provides the Commission with invaluable assistance and is economical because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration. Expert consultants are also retained to advise the Commission at meetings.

After making its preliminary decisions on a subject, the Commission ordinarily distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining

8. Gov't Code §§ 8280-8297 (statute governing California Law Revision Commission).

9. The Legislative Counsel, an ex officio member of the Law Revision Commission, serves as a Commissioner of the Commission on Uniform State Laws. See Gov't Code § 8261. The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

10. See Gov't Code § 8289. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. Gov't Code § 8290.

11. See Gov't Code § 8293. In addition, Code of Civil Procedure Section 703.120 requires the Commission to review statutes providing for exemptions from enforcement of money judgments each 10 years and to recommend any needed revisions.

what recommendation, if any, the Commission will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature (including a draft of any legislation necessary to effectuate its recommendation) is published.¹² The background study is generally published with the recommendation or in a law review.¹³

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in the Commission's report and are frequently revised by legislative committee or Commission reports to reflect amendments made after the recommended legislation has been introduced in the Legislature.¹⁴ These reports, which are printed or noted in the legislative journals, state that the Comments to the various sections of the bill contained in the Commission's recommendation reflect the intent of the committee in approving the bill except to the extent that new or revised Comments are set out in the committee report itself or in a report on file with the committee.¹⁵ The Comment indicates the derivation of the section and often explains its purpose, its relation to other sections, and potential problems in its meaning or application. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions.¹⁶ However, while the

12. Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

13. For a list of background studies published in law reviews, see 10 Cal. L. Revision Comm'n Reports 1108 n.5 (1971), 11 Cal. L. Revision Comm'n Reports 1008 n.5 & 1108 n.5 (1973), 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976), 16 Cal. L. Revision Comm'n Reports 2021 n.6 (1982), 17 Cal. L. Revision Comm'n Reports 819 n.6 (1984), 18 Cal. L. Revision Comm'n Reports 212 n.17 & 1713 n.20 (1986), and 19 Cal. L. Revision Comm'n Reports 513 n.22 (1988).

14. Many amendments are made on recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

15. For examples of such reports, see Appendix 3 and Appendix 4 to this Report. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App. 3d 877, 884, 109 Cal. Rptr. 421, 426 (1973).

16. E.g., *Van Arsdale v. Hollinger*, 68 Cal. 2d 245, 249-50, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). See also *Milligan v. City of Laguna Beach*, 34 Cal. 3d 829, 831, 670 P.2d 1121, 1122, 196 Cal. Rptr. 38, 39 (1983) ("To ascertain the legislative intent, courts have resorted to many rules of construction. However, when the Legislature has stated the purpose of its enactment in unmistakable terms [e.g., in official comments], we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give

Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.¹⁷ Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.¹⁸ The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.¹⁹ Thus, a large and representative number of interested persons is given an opportunity to study and comment on the Commission's work before it is considered for enactment by the Legislature.²⁰ The annual reports and the recommendations and studies of the Commission are republished in a set of hardcover volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state. These volumes are available at most county law libraries and at some other libraries. Some hardcover volumes are out of print, but others are available for purchase.²¹

way to expressed legislative purpose."'). The Comments are published by the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

17. See, e.g., *Arellano v. Moreno*, 33 Cal. App. 3d 877, 109 Cal. Rptr. 421 (1973).

18. The Commission does not concur in the Kaplan approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal. 3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (1971). For a reaction to the problem created by the Kaplan approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). See also 1974 Cal. Stat. ch. 227.

19. See Gov't Code § 8291.

20. For a step-by-step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouilly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 Cal. L. Revision Comm'n Reports 3 (1965).

21. See "Publications of the California Law Revision Commission" *infra*.

PERSONNEL OF COMMISSION

As of December 1, 1988, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Forrest A. Plant, Sacramento, <i>Chairperson</i>	October 1, 1989
Edwin K. Marzec, Santa Monica, <i>Vice Chairperson</i>	October 1, 1991
Roger Arnebergh, Van Nuys, <i>Member</i>	October 1, 1991
Bion M. Gregory, Sacramento, <i>ex officio Member</i>	①
Elihu M. Harris, Oakland, <i>Assembly Member</i>	②
Bill Lockyer, Hayward, <i>Senate Member</i>	②
Arthur K. Marshall, Los Angeles, <i>Member</i>	October 1, 1991
Tim Paone, Irvine, <i>Member</i>	October 1, 1989
Ann E. Stodden, Los Angeles, <i>Member</i>	October 1, 1991
Vaughn R. Walker, San Francisco, <i>Member</i>	October 1, 1989

① The Legislative Counsel is an ex officio member of the Commission

② The legislative members of the Commission serve at the pleasure of the appointing power.

Effective September 1, 1988, the Commission elected Forrest A. Plant as Chairperson (succeeding Ann E. Stodden) and Edwin K. Marzec as Vice Chairperson (succeeding Forrest A. Plant). The terms of the new officers end August 31, 1989.

As of December 1, 1988, the staff of the Commission is:

Legal

John H. DeMouilly <i>Executive Secretary</i>	Robert J. Murphy III <i>Staff Counsel</i>
Nathaniel Sterling <i>Assistant Executive Secretary</i>	Stan G. Ulrich <i>Staff Counsel</i>

Administrative-Secretarial

Stephen F. Zimmerman <i>Administrative Assistant</i>	
Eugenia Ayala <i>Word Processing Technician</i>	Victoria V. Matias <i>Word Processing Technician</i>

During 1988, Robert Katz, a student at Stanford Law School, and Marc S. DeGennaro, Helene K. Leckman, and Megan A. Smith, students at the University of Santa Clara Law School, were employed as part-time student legal assistants during the school year. Brad Nilsson, a student at the University of Santa Clara Law School, and Edward Romero, Jr., a student at Boalt Hall, were employed as full-time student legal assistants during the summer.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1988 LEGISLATIVE SESSION

The Commission recommended two bills and two concurrent resolutions for enactment at the 1988 legislative session. Both of the concurrent resolutions were adopted and both of the bills were enacted.

Major Probate Bill

Assembly Bill 2841, which became Chapter 1199 of the Statutes of 1988, was introduced by Assembly Member Harris to effectuate ten Commission recommendations. See *Public Guardians and Administrators*, 19 Cal. L. Revision Comm'n Reports 707 (1988); *Inventory and Appraisal*, 19 Cal. L. Revision Comm'n Reports 741 (1988); *Opening Estate Administration*, 19 Cal. L. Revision Comm'n Reports 787 (1988); *Abatement*, 19 Cal. L. Revision Comm'n Reports 865 (1988); *Accounts*, 19 Cal. L. Revision Comm'n Reports 877 (1988); *Litigation Involving Decedents*, 19 Cal. L. Revision Comm'n Reports 899 (1988); *Rules of Procedure in Probate*, 19 Cal. L. Revision Comm'n Reports 917 (1988); *Distribution and Discharge*, 19 Cal. L. Revision Comm'n Reports 953 (1988); *Nondomiciliary Decedents*, 19 Cal. L. Revision Comm'n Reports 993 (1988); *Interest and Income During Administration*, 19 Cal. L. Revision Comm'n Reports 1019 (1988); *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 1031 (1988). See also *Communication From the California Law Revision Commission Concerning Assembly Bill 2841*, reprinted as Appendix 4 of this report. The bill was enacted after amendments were made.

Probate Cleanup Bill

Assembly Bill 2779, which became Chapter 113 of the Statutes of 1988, was introduced by Assembly Member Harris to make technical revisions in statutes recently enacted upon recommendation of the Commission (Chapter 923 of the Statutes of 1987) and also made related conforming and technical changes. The bill was enacted as urgency legislation to become operative at the same time as Chapter 923. See *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 1031 (1988); *Communication From the California Law Revision Commission Concerning Assembly Bill 2779*, reprinted as Appendix 3 of this Report. The bill was enacted after amendments were made.

Resolutions Regarding Topics for Study

Senate Concurrent Resolution 62, introduced by Senator Lockyer and adopted as Resolution Chapter 81 of the Statutes of 1988, continues the Commission's authority to study topics previously authorized.

Assembly Concurrent Resolution 42, introduced by Assembly Member Harris and adopted as Resolution Chapter 20 of the Statutes of 1988, authorizes the Commission to study the law relating to the payment and the shifting of attorneys' fees between litigants.

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 8290 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the state or the Supreme Court of the United States.

Pursuant to this directive, the Commission has reviewed the decisions of the United States Supreme Court and the California Supreme Court published since the Commission's last Annual Report was prepared²² and has the following to report:

(1) No decision of the United States Supreme Court or of the California Supreme Court holding a statute of this state repealed by implication has been found.

(2) No decision of the United States Supreme Court²³ or of the California Supreme Court holding a statute of this state unconstitutional has been found.

22. This study has been carried through 46 Cal. 3d 193 (Advance Sheet No. 22, August 18, 1988) and 108 S. Ct. 2922 (Advance Sheet No. 18, July 15, 1988).

23. In *Hicks on Behalf of Feiock v. Feiock*, 108 S. Ct. 1423 (1988), concerning contempt proceedings under Code of Civil Procedure Section 1209.5 on failure to pay child support, the United States Supreme Court held that, if the contempt proceedings are criminal in nature, the statute would violate the due process clause of the Fourteenth Amendment since the statute has the effect of presuming the ability to pay the ordered support. However, the court remanded the case for the purpose of determining whether the contempt proceedings were civil or criminal. See also *In re Hicks*, 180 Cal. App. 3d 649, 225 Cal. Rptr. 748 (1986).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that it be authorized to complete its study of the topics previously authorized for study (see "Calendar of Topics Authorized for Study" set out as Appendix 1 to this Report).

The Commission also recommends that it be authorized to study and recommend legislation to correct minor or technical defects in the statutes. See page 1162.

APPENDIX 1

CALENDAR OF TOPICS AUTHORIZED FOR STUDY

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.

Creditors' remedies. Whether the law relating to creditors' remedies (including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1974 Cal. Stat. res. ch. 45; 1972 Cal. Stat. res. ch. 27; 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).)

Probate Code. Whether the California Probate Code should be revised, including but not limited to, whether California should adopt, in whole or in part, the Uniform Probate Code. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Real and personal property. Whether the law relating to real and personal property (including, but not limited to, a Marketable Title Act, covenants, servitudes, conditions, and restrictions on land use or relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon termination or abandonment of a lease, powers of appointment, and related matters) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40, consolidating various previously authorized aspects of real and personal property law into one comprehensive topic.)

Family law. Whether the law relating to family law (including, but not limited to, community property) should be revised. (Authorized by 1983 Cal. Stat. res. ch. 40. See also 1978 Cal. Stat. res. ch. 65; 16 Cal. L. Revision Comm'n Reports 2019 (1982); 14 Cal. L. Revision Comm'n Reports 22 (1978).)

Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75.)

Class actions. Whether the law relating to class actions should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).)

Offers of compromise. Whether the law relating to offers of compromise should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).)

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised. (Authorized by 1975 Cal. Stat. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).)

Procedure for removal of invalid liens. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney's fees to the prevailing party. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Special assessment liens for public improvements. Whether acts governing special assessments for public improvements should be simplified and unified. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Injunctions. Whether the law on injunctions and related matters should be revised. (Authorized by 1984 Cal. Stat. res. ch. 42.)

Involuntary dismissal for lack of prosecution. Whether the law relating to involuntary dismissal for lack of prosecution should be revised. (Authorized by 1978 Cal. Stat. res. ch. 85. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).)

Statutes of limitation for felonies. Whether the law relating to statutes of limitations applicable to felonies should be revised. (Authorized by 1981 Cal. Stat. ch. 909, § 3.)

Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised. (Authorized by 1979 Cal. Stat. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).)

Child custody, adoption, guardianship, and related matters. Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised. (Authorized by 1972 Cal. Stat. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stat. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).)

Evidence. Whether the Evidence Code should be revised. (Authorized by 1965 Cal. Stat. res. ch. 130.)

Arbitration. Whether the law relating to arbitration should be revised. (Authorized by 1968 Cal. Stat. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).)

Modification of contracts. Whether the law relating to modification of contracts should be revised. (Authorized by 1974 Cal. Stat. res. ch. 45. See also 1957 Cal. Stat. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).)

Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised. (Authorized by 1977 Cal. Stat. res. ch. 17. See also 1957 Cal. Stat. res. ch. 202.)

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised. (Authorized by 1971 Cal. Stat. res. ch. 74. See also 1970 Cal. Stat. res. ch. 46; 1965 Cal. Stat. res. ch. 130.)

Liquidated damages. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised. (Authorized by 1973 Cal. Stat. res. ch. 39. See also 1969 Cal. Stat. res. ch. 224.)

Parol evidence rule. Whether the parol evidence rule should be revised. (Authorized by 1971 Cal. Stat. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).)

Pleadings in civil actions. Whether the law relating to pleadings in civil actions and proceedings should be revised. (Authorized by 1980 Cal. Stat. res. ch. 37.)

Administrative Law. Whether there should be changes to administrative law. (Authorized by 1987 Cal. Stat. res. ch. 47.)

Attorneys' Fees. Whether there should be changes in the law relating to the payment and the shifting of attorneys' fees between litigants. (Authorized by 1988 Cal. Stat. res. ch. 20.)

APPENDIX 2
LEGISLATIVE ACTION ON COMMISSION
RECOMMENDATIONS

(Cumulative)

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 12 (1957)	Enacted. 1955 Cal. Stat. chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1954 at 50 (1957)	Enacted. 1955 Cal. Stat. ch. 1183
3. <i>Fish and Game Code</i> , 1 Cal. L. Revision Comm'n Reports, Annual Report for 1957 at 13 (1957); 1 Cal. L. Revision Comm'n Reports, Annual Report for 1956 at 13 (1957)	Enacted. 1957 Cal. Stat. ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 Cal. L. Revision Comm'n Reports at A-1 (1957)	Enacted. 1957 Cal. Stat. ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 Cal. L. Revision Comm'n Reports at B-1 (1957)	Enacted. 1957 Cal. Stat. ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 Cal. L. Revision Comm'n Reports at C-1 (1957)	Not enacted. But see Code Civ. Proc. § 612.5, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 1 Cal. L. Revision Comm'n Reports at D-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 1261.
8. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 Cal. L. Revision Comm'n Reports at E-1 (1957)	Enacted. 1957 Cal. Stat. ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 1 Cal. L. Revision Comm'n Reports at F-1 (1957)	Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to Evid. Code § 970.

Recommendation	Action by Legislature
10. <i>Suspension of the Absolute Power of Alienation</i> , 1 Cal. L. Revision Comm'n Reports at G-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 14 (1959)	Enacted. 1959 Cal. Stat. ch. 470
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 Cal. L. Revision Comm'n Reports at H-1 (1957)	Enacted. 1957 Cal. Stat. ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 Cal. L. Revision Comm'n Reports at I-1 (1957)	Enacted. 1957 Cal. Stat. ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 Cal. L. Revision Comm'n Reports at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 1 Cal. L. Revision Comm'n Reports at K-1 (1957); 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 16 (1959)	Enacted. 1959 Cal. Stat. ch. 468
15. <i>Retention of Venue for Convenience of Witnesses</i> , 1 Cal. L. Revision Comm'n Reports at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 Cal. L. Revision Comm'n Reports at M-1 (1957)	Enacted. 1957 Cal. Stat. ch. 1498
17. <i>Grand Juries</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 20 (1959)	Enacted. 1959 Cal. Stat. ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 21 (1959)	Enacted. 1959 Cal. Stat. ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 Cal. L. Revision Comm'n Reports, Annual Report for 1959 at 29 (1959)	No legislation recommended.
20. <i>Presentation of Claims Against Public Entities</i> , 2 Cal. L. Revision Comm'n Reports at A-1 (1959)	Enacted. 1959 Cal. Stat. chs. 1715, 1724, 1725, 1726, 1727, 1728; Cal. Const., Art. XI, § 10 (1960)

Recommendation	Action by Legislature
21. <i>Right of Nonresident Aliens to Inherit</i> , 2 Cal. L. Revision Comm'n Reports at B-1 (1959); 11 Cal. L. Revision Comm'n Reports 421 (1973)	Enacted. 1974 Cal. Stat. ch. 425
22. <i>Mortgages to Secure Future Advances</i> , 2 Cal. L. Revision Comm'n Reports at C-1 (1959)	Enacted. 1959 Cal. Stat. ch. 528
23. <i>Doctrine of Worthier Title</i> , 2 Cal. L. Revision Comm'n Reports at D-1 (1959)	Enacted. 1959 Cal. Stat. ch. 122
24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 Cal. L. Revision Comm'n Reports at E-1 (1959)	Not enacted. But see 1972 Cal. Stat. ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 Cal. L. Revision Comm'n Reports at F-1 (1959)	Enacted. 1959 Cal. Stat. ch. 469
26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 Cal. L. Revision Comm'n Reports at G-1 (1959)	Not enacted. But see Corp. Code §§ 1001, 1002, enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at A-1 (1961)	Not enacted. But see Evid. Code § 810 <i>et seq.</i> enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at B-1 (1961)	Enacted. 1961 Cal. Stat. chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 Cal. L. Revision Comm'n Reports at C-1 (1961)	Not enacted. But see Gov't Code § 7260 <i>et seq.</i> enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 Cal. L. Revision Comm'n Reports at D-1 (1961)	Enacted. 1961 Cal. Stat. ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 Cal. L. Revision Comm'n Reports at E-1 (1961)	Enacted. 1961 Cal. Stat. ch. 1616
32. <i>Survival of Actions</i> , 3 Cal. L. Revision Comm'n Reports at F-1 (1961)	Enacted. 1961 Cal. Stat. ch. 657
33. <i>Arbitration</i> , Cal. L. Revision Comm'n Reports at G-1 (1961)	Enacted. 1961 Cal. Stat. ch. 461

Recommendation	Action by Legislature
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 Cal. L. Revision Comm'n Reports at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i>) which was enacted.
35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 Cal. L. Revision Comm'n Reports at I-1 (1961)	Enacted. 1961 Cal. Stat. ch. 636
36. <i>Notice of Alibi in Criminal Actions</i> . 3 Cal. L. Revision Comm'n Reports at J-1 (1961)	Not enacted.
37. <i>Discovery in Eminent Domain Proceedings</i> , 4 Cal. L. Revision Comm'n Reports 701 (1963); 8 Cal. L. Revision Comm'n Reports 19 (1967)	Enacted. 1967 Cal. Stat. ch. 1104
38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 801 (1963)	Enacted. 1963 Cal. Stat. ch. 1681
39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1001 (1963)	Enacted. 1963 Cal. Stat. ch. 1715
40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1201 (1963)	Enacted. 1963 Cal. Stat. ch. 1682
41. <i>Defense of Public Employees</i> , 4 Cal. L. Revision Comm'n Reports 1301 (1963)	Enacted. 1963 Cal. Stat. ch. 1683
42. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 4 Cal. L. Revision Comm'n Reports 1401 (1963); 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 1527
43. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 Cal. L. Revision Comm'n Reports 1501 (1963)	Enacted. 1963 Cal. Stat. ch. 1684
44. <i>Sovereign Immunity — Amendments and Repeals of Inconsistent Statutes</i> , 4 Cal. L. Revision Comm'n Reports 1601 (1963)	Enacted. 1963 Cal. Stat. chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 Cal. L. Revision Comm'n Reports 1 (1965)	Enacted. 1965 Cal. Stat. ch. 299

Recommendation	Action by Legislature
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 Cal. L. Revision Comm'n Reports 401 (1965)	Enacted. 1965 Cal. Stat. ch. 653
47. <i>Evidence Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 101 (1967)	Enacted in part. 1967 Cal. Stat. ch. 650. Balance enacted. 1970 Cal. Stat. ch. 69.
48. <i>Evidence—Agricultural Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 201 (1967)	Enacted. 1967 Cal. Stat. ch. 262
49. <i>Evidence—Commercial Code Revisions</i> , 8 Cal. L. Revision Comm'n Reports 301 (1967)	Enacted. 1967 Cal. Stat. ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should be Separate or Community Property</i> , 8 Cal. L. Revision Comm'n Reports 401 (1967); 8 Cal. L. Revision Comm'n Reports 1385 (1967)	Enacted. 1968 Cal. Stat. chs. 457, 458
51. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 Cal. L. Revision Comm'n Reports 501 (1967)	Enacted. 1967 Cal. Stat. ch. 702
52. <i>Additur</i> , 8 Cal. L. Revision Comm'n Reports 601 (1967)	Enacted. 1967 Cal. Stat. ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 8 Cal. L. Revision Comm'n Reports 701 (1967); 9 Cal. L. Revision Comm'n Reports 401 (1969); 9 Cal. L. Revision Comm'n Reports 153 (1969)	Enacted. 1970 Cal. Stat. ch. 89
54. <i>Good Faith Improver of Land Owned by Another</i> , 8 Cal. L. Revision Comm'n Reports 801 (1967); 8 Cal. L. Revision Comm'n Reports 1373 (1967)	Enacted. 1968 Cal. Stat. ch. 150
55. <i>Suit By or Against an Unincorporated Association</i> , 8 Cal. L. Revision Comm'n Reports 901 (1967)	Enacted. 1967 Cal. Stat. ch. 1324
56. <i>Escheat</i> , 8 Cal. L. Revision Comm'n Reports 1001 (1967)	Enacted. 1968 Cal. Stat. chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 Cal. L. Revision Comm'n Reports 1361 (1967)	Enacted. 1968 Cal. Stat. ch. 133
58. <i>Service of Process on Unincorporated Associations</i> , 8 Cal. L. Revision Comm'n Reports 1403 (1967)	Enacted. 1968 Cal. Stat. ch. 132

Recommendation	Action by Legislature
59. <i>Sovereign Immunity — Statute of Limitations</i> , 9 Cal. L. Revision Comm'n Reports 49 (1969); 9 Cal. L. Revision Comm'n Reports 175 (1969)	Enacted. 1970 Cal. Stat. ch. 104
60. <i>Additur and Remittitur</i> , 9 Cal. L. Revision Comm'n Reports 63 (1969)	Enacted. 1969 Cal. Stat. ch. 115
61. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 71 (1969)	Enacted. 1969 Cal. Stat. ch. 114
62. <i>Quasi-Community Property</i> , 9 Cal. L. Revision Comm'n Reports 113 (1969)	Enacted. 1970 Cal. Stat. ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 Cal. L. Revision Comm'n Reports 123 (1969)	Enacted. 1970 Cal. Stat. ch. 417
64. <i>Revisions of Evidence Code</i> , 9 Cal. L. Revision Comm'n Reports 137 (1969)	Enacted in part. 1970 Cal. Stat. ch. 69. See also 1970 Cal. Stat. chs. 1396, 1397
65. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 Cal. L. Revision Comm'n Reports 201 (1969)	Enacted. 1969 Cal. Stat. ch. 156
66. <i>Powers of Appointment</i> , 9 Cal. L. Revision Comm'n Reports 301 (1969)	Enacted. 1969 Cal. Stat. chs. 113, 155
67. <i>Evidence Code—Revisions of Privileges Article</i> , 9 Cal. L. Revision Comm'n Reports 501 (1969)	Vetoed. But see 1970 Cal. Stat. chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 Cal. L. Revision Comm'n Reports 601 (1969)	Enacted. 1970 Cal. Stat. ch. 618
69. <i>Representation as to the Credit of Third Persons and the Statute of Frauds</i> , 9 Cal. L. Revision Comm'n Reports 701 (1969)	Enacted. 1970 Cal. Stat. ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 Cal. L. Revision Comm'n Reports 801 (1969)	Enacted in part. 1970 Cal. Stat. chs. 662, 1099
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 Cal. L. Revision Comm'n Reports 901 (1969)	Enacted. 1970 Cal. Stat. ch. 45
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 Cal. L. Revision Comm'n Reports 501 (1971)	Enacted. 1971 Cal. Stat. chs. 244, 950. See also 1973 Cal. Stat. ch. 828

Recommendation	Action by Legislature
73. <i>Wage Garnishment and Related Matters</i> , 10 Cal. L. Revision Comm'n Reports 701 (1971); 11 Cal. L. Revision Comm'n Reports 101 (1973); 12 Cal. L. Revision Comm'n Reports 901 (1974); 13 Cal. L. Revision Comm'n Reports 601 (1976); 13 Cal. L. Revision Comm'n Reports 1703 (1976); 14 Cal. L. Revision Comm'n Reports 261 (1978)	Enacted in part. 1978 Cal. Stat. ch. 1133. See also 1979 Cal. Stat. ch. 66
74. <i>Proof of Foreign Official Records</i> , 10 Cal. L. Revision Comm'n Reports 1022 (1971)	Enacted. 1970 Cal. Stat. ch. 41
75. <i>Inverse Condemnation — Insurance Coverage</i> , 10 Cal. L. Revision Comm'n Reports 1051 (1971)	Enacted. 1971 Cal. Stat. ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 Cal. L. Revision Comm'n Reports 1147 (1971)	Enacted. 1971 Cal. Stat. ch. 1607
77. <i>Civil Arrest</i> , 11 Cal. L. Revision Comm'n Reports 1 (1973)	Enacted. 1973 Cal. Stat. ch. 20
78. <i>Claim and Delivery Statute</i> , 11 Cal. L. Revision Comm'n Reports 301 (1973)	Enacted. 1973 Cal. Stat. ch. 526
79. <i>Unclaimed Property</i> , 11 Cal. L. Revision Comm'n Reports 401 (1973); 12 Cal. L. Revision Comm'n Reports 609 (1974)	Proposed resolution enacted. 1973 Cal. Stat. res. ch. 76. Legislation enacted. 1975 Cal. Stat. ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 Cal. L. Revision Comm'n Reports 451 (1973)	Enacted. 1974 Cal. Stat. ch. 211
81. <i>Prejudgment Attachment</i> , 11 Cal. L. Revision Comm'n Reports 701 (1973)	Enacted. 1974 Cal. Stat. ch. 1516. See also 1975 Cal. Stat. ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 Cal. L. Revision Comm'n Reports 951 (1973)	Enacted. 1974 Cal. Stat. chs. 331, 332
83. <i>Pleading</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1024 (1973)	Enacted. 1972 Cal. Stat. ch. 73
84. <i>Evidence—Judicial Notice</i> (technical change), 11 Cal. L. Revision Comm'n Reports 1025 (1973)	Enacted. 1972 Cal. Stat. ch. 764
85. <i>Evidence — "Criminal Conduct" Exception</i> , 11 Cal. L. Revision Comm'n Reports 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i>) which was enacted.

Recommendation	Action by Legislature
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 Cal. L. Revision Comm'n Reports 1163 (1973)	Enacted. 1974 Cal. Stat. ch. 227
87. <i>Liquidated Damages</i> , 11 Cal. L. Revision Comm'n Reports 1201 (1973); 13 Cal. L. Revision Comm'n Reports 2139 (1976); 13 Cal. L. Revision Comm'n Reports 1735 (1976)	Enacted. 1977 Cal. Stat. ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 Cal. L. Revision Comm'n Reports 575 (1974)	Enacted. 1975 Cal. Stat. ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 Cal. L. Revision Comm'n Reports 587 (1974)	Enacted. 1975 Cal. Stat. ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 Cal. L. Revision Comm'n Reports 601 (1974)	Enacted. 1975 Cal. Stat. ch. 318
91. <i>Improvement Acts</i> , 12 Cal. L. Revision Comm'n Reports 1001 (1974)	Enacted. 1974 Cal. Stat. ch. 426
92. <i>The Eminent Domain Law</i> , 12 Cal. L. Revision Comm'n Reports 1601 (1974)	Enacted. 1975 Cal. Stat. chs. 1239, 1240, 1275
93. <i>Eminent Domain — Conforming Changes in Special District Statutes</i> , 12 Cal. L. Revision Comm'n Reports 1101 (1974); 12 Cal. L. Revision Comm'n Reports 2004 (1974)	Enacted. 1975 Cal. Stat. chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 Cal. L. Revision Comm'n Reports 301 (1976); 13 Cal. L. Revision Comm'n Reports 2129 (1976)	Enacted. 1975 Cal. Stat. ch. 7; 1976 Cal. Stat. ch. 109
95. <i>Partition of Real and Personal Property</i> , 13 Cal. L. Revision Comm'n Reports 401 (1976)	Enacted. 1976 Cal. Stat. ch. 73
96. <i>Revision of the Attachment Law</i> , 13 Cal. L. Revision Comm'n Reports 801 (1976)	Enacted. 1976 Cal. Stat. ch. 437
97. <i>Undertakings for Costs</i> , 13 Cal. L. Revision Comm'n Reports 901 (1976)	Not enacted 1976. But see recommendation to 1979 session (item 118 <i>infra</i>) which was enacted.

Recommendation	Action by Legislature
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2051 (1976)	Not enacted.
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 Cal. L. Revision Comm'n Reports 2079 (1976)	Enacted. 1976 Cal. Stat. ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 Cal. L. Revision Comm'n Reports 2085 (1976)	Enacted. 1976 Cal. Stat. ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 Cal. L. Revision Comm'n Reports 2091 (1976)	Enacted in part (utility easements). 1976 Cal. Stat. ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 Cal. L. Revision Comm'n Reports 2101 (1976)	Enacted. 1976 Cal. Stat. ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 Cal. L. Revision Comm'n Reports 2115 (1976)	Enacted. 1985 Cal. Stat. ch. 100
104. <i>Service of Process on Unincorporated Associations</i> , 13 Cal. L. Revision Comm'n Reports 1657 (1976)	Enacted. 1976 Cal. Stat. ch. 888
105. <i>Sister State Money Judgments</i> , 13 Cal. L. Revision Comm'n Reports 1669 (1976)	Enacted. 1977 Cal. Stat. ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 Cal. L. Revision Comm'n Reports 1679 (1976)	Enacted. 1977 Cal. Stat. ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 Cal. L. Revision Comm'n Reports 2201 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 Cal. L. Revision Comm'n Reports 49 (1978)	Enacted. 1977 Cal. Stat. ch. 155
109. <i>Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 Cal. L. Revision Comm'n Reports 61 (1978)	Enacted. 1977 Cal. Stat. ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 Cal. L. Revision Comm'n Reports 83 (1978)	Enacted. 1978 Cal. Stat. ch. 286

Recommendation	Action by Legislature
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 Cal. L. Revision Comm'n Reports 93 (1978)	Enacted. 1978 Cal. Stat. ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 Cal. L. Revision Comm'n Reports 105 (1978)	Enacted in part. 1978 Cal. Stat. ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 Cal. L. Revision Comm'n Reports 127 (1978); 15 Cal. L. Revision Comm'n Reports 1307 (1980)	Enacted in part. 1985 Cal. Stat. chs. 545 (licensed educational psychologist), 1077 (repeal of Evidence Code § 1028).
114. <i>Parole Evidence Rule</i> , 14 Cal. L. Revision Comm'n Reports 143 (1978)	Enacted. 1978 Cal. Stat. ch. 150
115. <i>Attachment Law—Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 Cal. L. Revision Comm'n Reports 241 (1978)	Enacted. 1978 Cal. Stat. ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 Cal. L. Revision Comm'n Reports 257 (1978)	Enacted. 1978 Cal. Stat. ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 Cal. L. Revision Comm'n Reports 291 (1978)	Enacted. 1979 Cal. Stat. ch. 31
118. <i>Security for Costs</i> , 14 Cal. L. Revision Comm'n Reports 319 (1978)	Enacted. 1980 Cal. Stat. ch. 114
119. <i>Guardianship-Conservatorship Law</i> , 14 Cal. L. Revision Comm'n Reports 501 (1978); 15 Cal. L. Revision Comm'n Reports 451 (1980)	Enacted. 1979 Cal. Stat. chs. 165, 726, 730
120. <i>Effect of New Bankruptcy Law on the Attachment Law</i> , 15 Cal. L. Revision Comm'n Reports 1043 (1980)	Enacted. 1979 Cal. Stat. ch. 77
121. <i>Confessions of Judgment</i> , 15 Cal. L. Revision Comm'n Reports 1053 (1980)	Enacted. 1979 Cal. Stat. ch. 568
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 Cal. L. Revision Comm'n Reports 1101 (1980)	Enacted. 1980 Cal. Stat. ch. 122
123. <i>Assignments for the Benefit of Creditors</i> , 15 Cal. L. Revision Comm'n Reports 1117 (1980)	Enacted. 1980 Cal. Stat. ch. 135

Recommendation	Action by Legislature
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 Cal. L. Revision Comm'n Reports 1137 (1980)	Enacted. 1980 Cal. Stat. ch. 1050
125. <i>Quiet Title Actions</i> , 15 Cal. L. Revision Comm'n Reports 1187 (1980)	Enacted. 1980 Cal. Stat. ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 Cal. L. Revision Comm'n Reports 1237 (1980)	Enacted. 1980 Cal. Stat. ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 Cal. L. Revision Comm'n Reports 301 (1980)	Enacted. 1980 Cal. Stat. ch. 381
128. <i>Probate Homestead</i> , 15 Cal. L. Revision Comm'n Reports 401 (1980)	Enacted. 1980 Cal. Stat. ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 Cal. L. Revision Comm'n Reports 1257 (1980)	Enacted. 1980 Cal. Stat. ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 Cal. L. Revision Comm'n Reports 1289 (1980)	Enacted. 1980 Cal. Stat. ch. 89
131. <i>Enforcement of Obligations After Death</i> , 15 Cal. L. Revision Comm'n Reports 1327 (1980)	Enacted. 1980 Cal. Stat. ch. 124
132. <i>Interest Rate on Judgments</i> , 15 Cal. L. Revision Comm'n Reports 7 (1980)	Enacted. 1982 Cal. Stat. ch. 150
133. <i>Married Women as Sole Traders</i> , 15 Cal. L. Revision Comm'n Reports 21 (1980)	Enacted. 1980 Cal. Stat. ch. 123
134. <i>State Tax Liens</i> , 15 Cal. L. Revision Comm'n Reports 29 (1980)	Enacted. 1980 Cal. Stat. ch. 600
135. <i>Guardianship-Conservatorship (technical change)</i> , 15 Cal. L. Revision Comm'n Reports 1247 (1980)	Enacted. 1980 Cal. Stat. ch. 246
136. <i>Revision of Guardianship-Conservatorship Law</i> , 15 Cal. L. Revision Comm'n Reports 1463 (1980)	Enacted. 1981 Cal. Stat. ch. 9
137. <i>The Enforcement of Judgments Law</i> , 15 Cal. L. Revision Comm'n Reports 2001 (1980)	Enacted. 1982 Cal. Stat. chs. 497, 1364

Recommendation	Action by Legislature
138. <i>Uniform Durable Power of Attorney Act</i> , 15 Cal. L. Revision Comm'n Reports 351 (1980)	Enacted. 1981 Cal. Stat. ch. 511
139. <i>Non-Probate Transfers</i> , 15 Cal. L. Revision Comm'n Reports 1605 (1980); 16 Cal. L. Revision Comm'n Reports 129 (1982)	Enacted in part (pay-on-death accounts) 1982 Cal. Stat. ch. 269; (credit unions and industrial loan companies) 1983 Cal. Stat. ch. 92.
140. <i>Revision of the Powers of Appointment Statute</i> , 15 Cal. L. Revision Comm'n Reports 1667 (1980)	Enacted. 1981 Cal. Stat. ch. 63
141. <i>State Tax Liens</i> (technical change), 16 Cal. L. Revision Comm'n Reports 24 (1982)	Enacted. 1981 Cal. Stat. ch. 217
142. <i>Assessment Liens on Property Taken for Public Use</i> (technical change), 16 Cal. L. Revision Comm'n Reports 25 (1982)	Enacted. 1981 Cal. Stat. ch. 139
143. <i>Federal Pensions as Community Property</i> , 16 Cal. L. Revision Comm'n Reports 47 (1982)	Proposed resolution adopted. 1982 Cal. Stat. res. ch. 44
144. <i>Holographic and Nuncupative Wills</i> , 16 Cal. L. Revision Comm'n Reports 301 (1982)	Enacted. 1982 Cal. Stat. ch. 187
145. <i>Marketable Title of Real Property</i> , 16 Cal. L. Revision Comm'n Reports 401 (1982)	Enacted. 1982 Cal. Stat. ch. 1268
146. <i>Statutory Bonds and Undertakings</i> , 16 Cal. L. Revision Comm'n Reports 501 (1982)	Enacted. 1982 Cal. Stat. chs. 517, 998
147. <i>Attachment</i> , 16 Cal. L. Revision Comm'n Reports 701 (1982)	Enacted. 1982 Cal. Stat. ch. 1198
148. <i>Escheat</i> (technical change), 16 Cal. L. Revision Comm'n Reports 124 (1982)	Enacted. 1982 Cal. Stat. ch. 182
149. <i>Missing Persons</i> , 16 Cal. L. Revision Comm'n Reports 105 (1982)	Enacted. 1983 Cal. Stat. ch. 201
150. <i>Emancipated Minors</i> , 16 Cal. L. Revision Comm'n Reports 183 (1982)	Enacted. 1983 Cal. Stat. ch. 6
151. <i>Notice in Limited Conservatorship Proceedings</i> , 16 Cal. L. Revision Comm'n Reports 199 (1982)	Enacted. 1983 Cal. Stat. ch. 72

Recommendation	Action by Legislature
152. <i>Disclaimer of Testamentary and Other Interests</i> , 16 Cal. L. Revision Comm'n Reports 207 (1982)	Enacted. 1983 Cal. Stat. ch. 17
153. <i>Wills and Intestate Succession</i> , 16 Cal. L. Revision Comm'n Reports 2301 (1982)	Enacted. 1983 Cal. Stat. ch. 842
154. <i>Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage</i> , 16 Cal. L. Revision Comm'n Reports 2165 (1982)	Enacted. 1983 Cal. Stat. ch. 342
155. <i>Creditors' Remedies</i> , 16 Cal. L. Revision Comm'n Reports 2175 (1982)	Enacted. 1983 Cal. Stat. ch. 155
156. <i>Conforming Changes to the Bond and Undertaking Law</i> , 16 Cal. L. Revision Comm'n Reports 2239 (1982)	Enacted. 1983 Cal. Stat. ch. 18
157. <i>Notice of Rejection of Late Claim Against Public Entity</i> , 16 Cal. L. Revision Comm'n Reports 2251 (1982)	Enacted. 1983 Cal. Stat. ch. 107
158. <i>Liability of Marital Property for Debts</i> , 17 Cal. L. Revision Comm'n Reports 1 (1984)	Enacted. 1984 Cal. Stat. ch. 1671
159. <i>Durable Power of Attorney for Health Care Decisions</i> , 16 Cal. L. Revision Comm'n Reports 101 (1984)	Enacted. 1983 Cal. Stat. ch. 1204
160. <i>Effect of Death of Support Obligor</i> , 17 Cal. L. Revision Comm'n Reports 897 (1984)	Enacted in part. 1984 Cal. Stat. ch. 19. Balance enacted. 1985 Cal. Stat. ch. 362 (item 186 <i>infra</i>).
161. <i>Vacation of Streets</i> (technical change), 17 Cal. L. Revision Comm'n Reports 825 (1984)	Enacted. 1983 Cal. Stat. ch. 52
162. <i>Marital Property Presumptions and Transmutations</i> , 17 Cal. L. Revision Comm'n Reports 205 (1984)	Enacted in part (transmutations). 1984 Cal. Stat. ch. 1733
163. <i>Reimbursement of Educational Expenses</i> , 17 Cal. L. Revision Comm'n Reports 229 (1984)	Enacted. 1984 Cal. Stat. ch. 1661
164. <i>Special Appearance in Family Law Proceedings</i> , 17 Cal. L. Revision Comm'n Reports 243 (1984)	Enacted. 1984 Cal. Stat. ch. 156

Recommendation	Action by Legislature
165. <i>Liability of Stepparent for Child Support</i> , 17 Cal. L. Revision Comm'n Reports 251 (1984)	Enacted. 1984 Cal. Stat. ch. 249
166. <i>Awarding Temporary Use of Family Home</i> , 17 Cal. L. Revision Comm'n Reports 261 (1984)	Enacted. 1984 Cal. Stat. ch. 463
167. <i>Disposition of Community Property</i> , 17 Cal. L. Revision Comm'n Reports 269 (1984)	Not enacted.
168. <i>Statutes of Limitation for Felonies</i> , 17 Cal. L. Revision Comm'n Reports 301 (1984)	Enacted. 1984 Cal. Stat. ch. 1270
169. <i>Independent Administration of Decedent's Estate</i> , 17 Cal. L. Revision Comm'n Reports 405 (1984)	Enacted. 1984 Cal. Stat. ch. 451
170. <i>Distribution of Estates Without Administration</i> , 17 Cal. L. Revision Comm'n Reports 421 (1984)	Enacted. 1984 Cal. Stat. ch. 451
171. <i>Simultaneous Deaths</i> , 17 Cal. L. Revision Comm'n Reports 443 (1984)	Not enacted.
172. <i>Notice of Will</i> , 17 Cal. L. Revision Comm'n Reports 461 (1984)	Not enacted.
173. <i>Garnishment of Amounts Payable to Trust Beneficiary</i> , 17 Cal. L. Revision Comm'n Reports 471 (1984)	Enacted. 1984 Cal. Stat. ch. 493
174. <i>Bonds for Personal Representatives</i> , 17 Cal. L. Revision Comm'n Reports 483 (1984)	Enacted. 1984 Cal. Stat. ch. 451
175. <i>Recording Affidavits of Death</i> , 17 Cal. L. Revision Comm'n Reports 493 (1984)	Enacted. 1984 Cal. Stat. ch. 527
176. <i>Execution of Witnessed Will</i> , 17 Cal. L. Revision Comm'n Reports 509 (1984)	Not enacted.
177. <i>Revision of Wills and Intestate Succession Law</i> , 17 Cal. L. Revision Comm'n Reports 537 (1984)	Enacted. 1984 Cal. Stat. ch. 892
178. <i>Uniform Transfers to Minors Act</i> , 17 Cal. L. Revision Comm'n Reports 601 (1984)	Enacted. 1984 Cal. Stat. ch. 243

Recommendation	Action by Legislature
179. <i>Statutory Forms for Durable Powers of Attorney</i> , 17 Cal. L. Revision Comm'n Reports 701 (1984)	Enacted. 1984 Cal. Stat. chs. 312 (health care) and 602 (general power of attorney).
180. <i>Dismissal for Lack of Prosecution</i> , 17 Cal. L. Revision Comm'n Reports 905 (1984)	Enacted. 1984 Cal. Stat. ch. 1705
181. <i>Severance of Joint Tenancy</i> , 17 Cal. L. Revision Comm'n Reports 941 (1984)	Enacted. 1984 Cal. Stat. ch. 519
182. <i>Quiet Title and Partition Judgments</i> , 17 Cal. L. Revision Comm'n Reports 947 (1984)	Enacted. 1984 Cal. Stat. ch. 20
183. <i>Dormant Mineral Rights</i> , 17 Cal. L. Revision Comm'n Reports 957 (1984)	Enacted. 1984 Cal. Stat. ch. 240
184. <i>Creditors' Remedies</i> , 17 Cal. L. Revision Comm'n Reports 975 (1984)	Enacted. 1984 Cal. Stat. ch. 538
185. <i>Rights Among Cotenants</i> , 17 Cal. L. Revision Comm'n Reports 1023 (1984)	Enacted. 1984 Cal. Stat. ch. 241
186. <i>Provision for Support if Support Obligor Dies</i> , 18 Cal. L. Revision Comm'n Reports 119 (1986)	Enacted. 1985 Cal. Stat. ch. 362
187. <i>Transfer of State Registered Property Without Probate</i> , 18 Cal. L. Revision Comm'n Reports 129 (1986)	Enacted. 1985 Cal. Stat. ch. 982
188. <i>Dividing Jointly Owned Property Upon Marriage Dissolution</i> , 18 Cal. L. Revision Comm'n Reports 147 (1986)	Enacted. 1985 Cal. Stat. ch. 362
189. <i>Probate Law</i> (clarifying revisions), 18 Cal. L. Revision Comm'n Reports 216 (1986)	Enacted. 1985 Cal. Stat. ch. 359
190. <i>Creditors' Remedies</i> (technical change), 18 Cal. L. Revision Comm'n Reports 217 (1986)	Enacted. 1985 Cal. Stat. ch. 41
191. <i>Uniform Transfers to Minors Act</i> (technical change), 18 Cal. L. Revision Comm'n Reports 218 (1986)	Enacted. 1985 Cal. Stat. ch. 90
192. <i>Protection of Mediation Communications</i> , 18 Cal. L. Revision Comm'n Reports 241 (1986)	Enacted. 1985 Cal. Stat. ch. 731

Recommendation	Action by Legislature
193. <i>Recording Severance of Joint Tenancy</i> , 18 Cal. L. Revision Comm'n Reports 249 (1986)	Enacted. 1985 Cal. Stat. ch. 157
194. <i>Abandoned Easements</i> , 18 Cal. L. Revision Comm'n Reports 257 (1986)	Enacted. 1985 Cal. Stat. ch. 157
195. <i>Distribution Under a Will or Trust</i> , 18 Cal. L. Revision Comm'n Reports 269 (1986)	Enacted. 1985 Cal. Stat. ch. 982
196. <i>Effect of Adoption or Out of Wedlock Birth on Rights at Death</i> , 18 Cal. L. Revision Comm'n Reports 289 (1986)	Enacted. 1985 Cal. Stat. ch. 982
197. <i>Durable Powers of Attorney</i> , 18 Cal. L. Revision Comm'n Reports 305 (1986)	Enacted. 1985 Cal. Stat. ch. 403
198. <i>Litigation Expenses in Family Law Proceedings</i> , 18 Cal. L. Revision Comm'n Reports 351 (1986)	Enacted. 1985 Cal. Stat. ch. 362
199. <i>Civil Code Sections 4800.1 and 4800.2</i> , 18 Cal. L. Revision Comm'n Reports 383 (1986)	One of two recommended measures enacted (Application of Civil Code Sections 4800.1 and 4800.2). 1986 Cal. Stat. ch. 49
200. <i>The Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 501 (1986)	Enacted. 1986 Cal. Stat. ch. 820.
201. <i>Disposition of Estate Without Administration</i> , 18 Cal. L. Revision Comm'n Reports 1005 (1986)	Enacted. 1986 Cal. Stat. ch. 783
202. <i>Small Estate Set-Aside</i> , 18 Cal. L. Revision Comm'n Reports 1101 (1986)	Enacted. 1986 Cal. Stat. ch. 783
203. <i>Proration of Estate Taxes</i> , 18 Cal. L. Revision Comm'n Reports 1127 (1986)	Enacted. 1986 Cal. Stat. ch. 783
204. <i>Notice in Guardianship and Conservatorship</i> , 18 Cal. L. Revision Comm'n Reports 1793 (1986)	Enacted. 1987 Cal. Stat. ch. 923
205. <i>Preliminary Provisions and Definitions</i> , 18 Cal. L. Revision Comm'n Reports 1807 (1986)	Enacted. 1987 Cal. Stat. ch. 923
206. <i>Technical Revisions in the Trust Law</i> , 18 Cal. L. Revision Comm'n Reports 1823 (1986)	Enacted. 1987 Cal. Stat. ch. 128

Recommendation	Action by Legislature
207. <i>Supervised Administration</i> , 19 Cal. L. Revision Comm'n Reports 5 (1988)	Enacted. 1987 Cal. Stat. ch. 923
208. <i>Independent Administration</i> , 19 Cal. L. Revision Comm'n Reports 205 (1988)	Enacted. 1987 Cal. Stat. ch. 923
209. <i>Creditor Claims Against Decedent's Estate</i> , 19 Cal. L. Revision Comm'n Reports 299 (1988)	Enacted. 1987 Cal. Stat. ch. 923
210. <i>Notice in Probate Proceedings</i> , 19 Cal. L. Revision Comm'n Reports 357 (1988)	Enacted. 1987 Cal. Stat. ch. 923
211. <i>Marital Deduction Gifts</i> , 19 Cal. L. Revision Comm'n Reports 615 (1988)	Enacted. 1987 Cal. Stat. ch. 923
212. <i>Estates of Missing Persons</i> , 19 Cal. L. Revision Comm'n Reports 637 (1988)	Enacted. 1987 Cal. Stat. ch. 923
213. <i>Public Guardians and Administrators</i> , 19 Cal. L. Revision Comm'n Reports 707 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
214. <i>Inventory and Appraisal</i> , 19 Cal. L. Revision Comm'n Reports 741 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
215. <i>Opening Estate Administration</i> , 19 Cal. L. Revision Comm'n Reports 787 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
216. <i>Abatement</i> , 19 Cal. L. Revision Comm'n Reports 865 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
217. <i>Accounts</i> , 19 Cal. L. Revision Comm'n Reports 877 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
218. <i>Litigation Involving Decedents</i> , 19 Cal. L. Revision Comm'n Reports 899 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
219. <i>Rules of Procedure in Probate</i> , 19 Cal. L. Revision Comm'n Reports 917 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
220. <i>Distribution and Discharge</i> , 19 Cal. L. Revision Comm'n Reports 953 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
221. <i>Nondomiciliary Decedents</i> , 19 Cal. L. Revision Comm'n Reports 993 (1988)	Enacted. 1988 Cal. Stat. ch. 1199
222. <i>Interest and Income During Administration</i> , 19 Cal. L. Revision Comm'n Reports 1019 (1988)	Enacted. 1988 Cal. Stat. ch. 1199

Recommendation**Action by Legislature**

223. *1988 Probate Cleanup Bill*, See 19
Cal. L. Revision Comm'n Reports 1167,
1191-1200 (1988)
- Enacted. 1988 Cal. Stat. ch. 113

APPENDIX 3

COMMUNICATION FROM THE CALIFORNIA LAW REVISION COMMISSION CONCERNING ASSEMBLY BILL 2779

[Noted in Senate J. May 10, 1988]

Assembly Bill 2779, authored by Assembly Member Harris, is a clean-up bill dealing with several technical matters related to recent probate legislation enacted on recommendation of the California Law Revision Commission. This report contains Comments to all of the revisions made by Assembly Bill 2779 and supersedes the Comments to these revisions contained in the *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 1031-1101 (December 1987).

This report includes Comments as revised to reflect amendments made in the Assembly and in the Senate.

Civil Code § 63 (amended). Capacity of emancipated minor

Comment. Section 63 is amended to correct a section reference.

Civil Code § 990 (amended). Deceased personality

Comment. Section 990 is amended to conform terminology.

Civil Code § 1086 (amended). Agency listings

Comment. Paragraph (4) of subdivision (e) of Section 1086 is superseded by Civil Code Section 1089.5 (application of article).

Civil Code § 1089.5 (added). Application of article

Comment. Section 1089.5 is added to make clear that Sections 1086-1090 of the Civil Code apply to the placing of a listing under Section 10150 of the Probate Code in a multiple listing service, except that the Civil Code sections are subject to the limitations, conditions, and requirements of the Probate Code provisions relating to sales of property in a decedent's estate.

Civil Code § 2322 (amended). Authority of agent

Comment. Subdivision (c) of Section 2322 is amended to clarify the application of trustees' duties to agents acting under general authority. See Prob. Code §§ 16002 (duty of loyalty), 16004 (duty to avoid conflict of interest), 16005 (duty not to undertake adverse trust), 16009 (duty to keep property separate and identified). This is a nonsubstantive revision intended to make more specific the technical revision implemented in the 1986 legislation that enacted the Trust Law. See 1986 Cal. Stat. ch. 820, § 9. The purpose of this and the earlier amendment is to provide appropriate cross-references to the law that superseded the repealed sections concerning trustees' duties. Neither amendment is intended to change the law relating to the duties of agents.

Civil Code § 2467 (amended). Estate transactions

Comment. Paragraph (5) of subdivision (a) of Section 2467 is amended to conform to Probate Code Section 15401(b) which precludes modification or revocation of a trust by an attorney in fact unless the trust instrument expressly so permits.

Civil Code § 2502 (amended). Statutory form durable power of attorney

Comment. Section 2502 is amended to correct a section reference.

**Food & Agriculture Code § 62708.5 (amended).
Producer-handlers**

Comment. Subdivision (a) of Section 62708.5 is amended to delete the reference to the Probate Code definitions of degrees of lineal and collateral consanguinity. The Probate Code no longer includes such definitions, and the meaning of these concepts is well understood.

**Government Code § 26827 (amended). Fee for first papers
in probate**

Comment. Subdivision (a) of Section 26827 is revised to clarify the testamentary trust accountings that are subject to this provision. Subdivision (a) is also revised to include petitions under Probate Code Sections 13151 (order determining succession to real property) and 13650 (order determining or confirming property passing or belonging to surviving spouse).

Subdivision (a) also recognizes the exception provided in Probate Code Section 13652, which excuses the fee otherwise applicable to a petition under Section 13650 if probate proceedings are already pending.

Subdivision (b) is revised to eliminate language repeated from subdivision (a). The provision relating to fees payable by a public administrator or the Department of Mental Health, formerly in subdivision (b), is generalized in Section 26827.5.

Government Code § 26827.4 (amended). Fee for subsequent papers in probate

Comment. Subdivision (a) (1) of Section 26827.4 is revised to correct a cross-reference to petitions required under the Independent Administration of Estates Act.

Government Code § 26827.5 (added). Payment of fees by public administrator of State Department of Mental Health

Comment. Section 26827.5 is a new provision that generalizes a provision formerly set out in Section 26827(b). This section applies to all filing fees described in Sections 26827 and 26827.4, whereas the former provision appeared to apply only to part of Section 26827. In addition, this section refers to assets under the control of the official.

Health & Safety Code § 7902 (amended). Notice of hearing

Comment. Section 7902 is amended to correct a section reference.

Insurance Code § 11580.3 (amended). Award to minor

Comment. Section 11580.3 is amended to correct a section reference and make other technical changes.

Probate Code § 1143 (amended). Small estates

Comment. Section 1143 is amended to correct section references.

Probate Code § 1211 (added). General form of notice

Comment. Section 1211 restates the general provisions of former Section 1200.1 without substantive change.

Probate Code § 2557 (amended). Exchange of property

Comment. Section 2557 is amended to correct the cross-reference in subdivision (c).

Probate Code § 3002 (amended). Community property

Comment. Section 3002 is amended to correct a section reference.

Probate Code § 9052 (amended). Form of notice

Comment. Section 9052 is revised for clarity.

Probate Code § 9103 (amended). Late claims

Comment. Subdivision (a) of Section 9103 is amended to reduce the burden of proof imposed on the creditor, in recognition of the difficulty of proving a negative (lack of knowledge).

Probate Code § 11421 (amended). Immediate payment of priority debts

Comment. Section 11421 is amended to delete the reference to debts given preference by federal or state law. The amendment recognizes that such debts are not given preference over expenses of administration or charges against the estate, but only over other debts due from the decedent. 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). The amendment also has the effect of reinstating the priority given wage claims by former Section 951. See also Rev. & Tax. Code § 19265 (personal income tax priority over claims other than taxes, expenses of administration, funeral expenses, expenses of last illness, family allowance, and wage claims).

The introductory clause of Section 11421 recognizes that the order of priority for payment of funeral expenses, expenses of last illness, family allowance, and wage claims, is the basic order of priority provided in Section 11420.

Probate Code § 13101 (amended). Affidavit or declaration

Comment. Subdivision (c) is added to Section 13101 to alert the person preparing or using the affidavit or declaration to the additional requirements of Section 13106.5. Where the item of property transferred is an obligation secured by a lien on real

property, Section 13106.5 requires that, in addition to the requirements of Section 13101, the affidavit or declaration include the recording reference to the instrument creating the lien and a notary public's certificate of acknowledgment identifying each person executing the affidavit or declaration.

Where the particular item of property transferred under this chapter is an obligation secured by a lien on real property, Section 13106.5 requires that the affidavit or declaration be recorded in the office of the county recorder of the county where the real property is located. Any duty of the obligor under Section 13105 to pay the successor of the decedent or otherwise to satisfy the obligation does not arise until the obligor has been furnished with satisfactory evidence that the affidavit or declaration has been recorded and satisfies the requirements of Section 13101 and subdivision (a) of Section 13106.5. Such evidence might be, for example, a certified copy of the recorded affidavit or declaration, but any other satisfactory evidence of the recorded affidavit or declaration would be sufficient. The reference to Civil Code Section 2935 in subdivision (b) of Section 13106.5 makes clear that the recording of the affidavit or declaration is not itself notice to the obligor so as to invalidate a payment made to the holder of the note secured by the lien on the real property.

Probate Code § 13106.5 (added). Recording of affidavit or declaration where property is obligation secured by lien on real property

Comment. Section 13106.5 is a new provision that covers the situation where the particular item of property transferred under this chapter is a debt (including a promissory note) secured by a lien on real property.

Where the instrument (including a mortgage or deed of trust) creating the lien has been recorded, subdivision (a) requires that the affidavit or declaration be recorded in the office of the county recorder of the county where the real property is located instead of being furnished to the holder of the property as required by the introductory clause of subdivision (a) of Section 13101. Recording of the affidavit or declaration in the real property records is mandatory so that the title records will reflect the transfer of the debt and security interest under this chapter to the person or persons executing the affidavit or declaration as successor of the decedent and to establish of record their authority to execute a satisfaction or release of the mortgage where the debt is secured by a mortgage.

The affidavit or declaration must be in the form prescribed by Section 13101 and must also satisfy the requirements of paragraphs (1) and (2) of subdivision (a) of Section 13106.5. The affidavit or declaration must be executed under penalty of perjury under the laws of the State of California. See Section 13101 (a) (11). A certified copy of the decedent's death certificate must be attached to the affidavit or declaration. Section 13101 (d).

Subdivision (a) (1) requires that the recording reference of the instrument creating the lien be included in the affidavit or declaration. This information will make it easier to locate the recorded lien instrument. Additionally, the recording reference will insure that the affidavit or declaration relates to an obligation secured by a lien on real property.

Subdivision (a) (2) requires that the affidavit or declaration include a notary public's certificate of acknowledgment identifying each person executing the affidavit or declaration. This is required because the affidavit or declaration is to be recorded in the real property records. The requirement also avoids the need to furnish the obligor on the debt with additional proof of the identity of each person executing the affidavit or declaration. See Section 13104(e).

Under subdivision (b), the transfer of the debt under this chapter is given the same effect as the assignment of the debt. It is a well established principle of law that the assignment of a debt carries with it the security for the payment of the debt. Thus, the assignment of a debt secured by a mortgage carries the mortgage with it (Civil Code § 2936); and, when a power to sell is given to a mortgagee or other encumbrancer in an instrument intended to secure the payment of money, the power is deemed a part of the security and vests in the person who by assignment becomes entitled to the money, and the power of sale may be executed by that person if the assignment is acknowledged and recorded (Civil Code § 2932.5).

The person or persons executing the affidavit or declaration as successor of the decedent have the same rights and duties they would have if they were an assignee of the mortgage or an assignee of the beneficial interest under the deed of trust. See Civil Code § 2941. Giving these persons these rights would, for example, permit a title insurer to rely upon the affidavit or declaration in case of the recording of a notice of default in a non-judicial foreclosure of the deed of trust or the mortgage (with a power of sale). The duties include, for example, the duty to execute a certificate of discharge of the mortgage if the lien is secured by a mortgage.

Under subdivision (b), the recording of the affidavit or declaration operates as constructive notice of its contents to all persons. See Civil Code § 2934. Any duty of the obligor under Section 13105 to pay the successor of the decedent or otherwise to satisfy the obligation does not arise until the obligor has been furnished with satisfactory evidence that the affidavit or declaration has been recorded and satisfies the requirements of subdivision (a). Such evidence might be, for example, a certified copy of the recorded affidavit or declaration, but any other satisfactory evidence of the recorded affidavit or declaration would be sufficient. The reference to Civil Code Section 2935 in subdivision (b) makes clear that the recording of the affidavit or declaration is not itself notice to the obligor so as to invalidate a payment made to the holder of the note secured by the lien on the real property.

Subdivision (c) makes clear that the trustee under the deed of trust can execute a reconveyance in reliance upon the statements made in the affidavit or declaration and protects a good faith purchaser, lessee, or lender who relies upon the recorded reconveyance. Subdivision (d) makes clear that a good faith purchaser, lessee, or lender may rely in good faith upon a recorded discharge of the mortgage executed by the person or persons executing the affidavit or declaration as successor of the decedent (or by the successor in interest of such a person). These protections are consistent with the protection given the holder of the decedent's property under Section 13106. They are necessary to protect the obligor on the debt who has paid the debt to the person or persons executing the affidavit or declaration and needs to have the property title records reflect the fact that the debt has been paid and the security released.

Except as specifically provided in Section 13106.5, the provisions of this chapter—including but not limited to Sections 13109-13113 (liability of persons to whom payment, delivery, or transfer of property is made under this chapter)—apply to money collected pursuant to Section 13106.5.

Section 13106.5 covers not only the right to payment of a debt secured by a lien on real property, but also the right to enforce an obligation the performance of which is secured by a lien on real property.

Probate Code § 13109 (amended). Liability of person taking personal property by affidavit for decedent's unsecured debts

Comment. Section 13109 is revised to make clear that a person who takes personal property by affidavit is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13152 (amended). Petition for order determining succession to real property

Comment. Subdivision (a) (7) of Section 13152 is revised to make a technical correction by substituting "petitioner" for "personal representative" as applicable to a trustee. This is a nonsubstantive revision.

Probate Code § 13156 (amended). Liability of person taking real property by court order for decedent's unsecured debts

Comment. Subdivision (d) is added to Section 13156 to make clear that a person who takes real property by court order under this chapter is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13204 (amended). Liability of person taking real property by affidavit for decedent's unsecured debts

Comment. Section 13204 is revised to make clear that a person who takes real property by affidavit is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13655 (amended). Petition for order determining or confirming passage of property to surviving spouse

Comment. Subdivision (b) (2) of Section 13655 is revised to make a technical correction by substituting "petitioner" for "personal representative" as applicable to a trustee. This is a nonsubstantive revision.

Probate Code § 15401 (amended). Method of revocation

Comment. Subdivision (b) of Section 15401 is amended to make clear that the rule applicable to revocation by an attorney in fact applies to modification. This is consistent with the rule provided in Section 15402.

Probate Code § 17101 (amended). Form of notice under Trust Law

Comment. Section 17101 is amended to delete a reference to Section 1200.1 which has been repealed. See 1987 Cal. Stat. ch. 923, § 59 (operative July 1, 1988).

Probate Code § 21520 (amended). Marital deduction gifts

Comment. Subdivision (a) of Section 21520 is amended to restore a missing word.

Probate Code § 21521 (amended). Chapter inapplicable to estate trust

Comment. Section 21521 is amended to make its application more precise.

Probate Code § 21525 (amended). Survival requirement

Comment. Subdivision (a) of Section 21525 is amended to make clear that a survival requirement that is not fixed in duration is limited to six months for a marital deduction gift, just as is a survival requirement of fixed duration that exceeds six months. For example, if an instrument that makes a marital deduction gift requires that the spouse survive the decedent until the date of distribution, subdivision (a) would impose a six-month limitation on the requirement.

This clarification is a specific application of the general intent of this chapter that a transferor's intent to make a marital deduction gift overrides any conflicting intent expressed by language in the instrument that may disqualify the gift from the federal estate tax marital deduction. Therefore, language in an instrument that would disqualify a gift from the marital deduction should be disregarded or interpreted in light of the overriding intent to obtain the marital deduction.

The amendment of subdivision (a) is declaratory of, and not a change in, existing law. Subdivision (c) emphasizes the fact that the amendment merely clarifies the Legislature's intent in

originally enacting former Section 1036 (1982 Cal. Stat. ch. 41, § 3) as well as in restating former Section 1036 without substantive change in subdivision (a) of Section 21525 (1987 Cal. Stat. ch. 923, § 101). See also Section 21501 (application of part) and former Section 1031 (application of former article).

Welfare & Institutions Code § 6254 (amended). Judicial commitments

Comment. Section 6254 is amended to delete the reference to former Section 1663 of the Probate Code which has been repealed. A court-ordered commitment to a United States government hospital is made pursuant to Section 5358 of the Welfare & Institutions Code. See also Welf. & Inst. Code §§ 4123 (transfer to federal institution), 5008(c) (intensive treatment in United States government hospital), 5366.1 (detention of person in facility of Veterans Administration or other agency of United States government), 6008 (conservatee admitted to hospital of United States government).

APPENDIX 4

COMMUNICATION FROM
THE CALIFORNIA LAW REVISION COMMISSION
CONCERNING ASSEMBLY BILL 2841

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Assembly Bill 2841 was introduced to effectuate the following recommendations of the California Law Revision Commission: *Recommendation Relating to Public Guardians and Administrators*, 19 Cal. L. Revision Comm'n Reports 707 (1988); *Recommendation Relating to Inventory and Appraisal*, 19 Cal. L. Revision Comm'n Reports 741 (1988); *Recommendation Relating to Opening Estate Administration*, 19 Cal. L. Revision Comm'n Reports 787 (1988); *Recommendation Relating to Abatement*, 19 Cal. L. Revision Comm'n Reports 865 (1988); *Recommendation Relating to Accounts*, 19 Cal. L. Revision Comm'n Reports 877 (1988); *Recommendation Relating to Litigation Involving Decedents*, 19 Cal. L. Revision Comm'n Reports 899 (1988); *Recommendation Relating to Rules of Procedure in Probate*, 19 Cal. L. Revision Comm'n Reports 917 (1988); *Recommendation Relating to Distribution and Discharge*, 19 Cal. L. Revision Comm'n Reports 953 (1988); *Recommendation Relating to Nondomiciliary Decedents*, 19 Cal. L. Revision Comm'n Reports 993 (1988); *Recommendation Relating to Interest and Income During Administration*, 19 Cal. L. Revision Comm'n Reports 1019 (1988); *Comments to Conforming Revisions and Repeals*, 19 Cal. L. Revision Comm'n Reports 1031 (1988).

The Comments contained in the Law Revision Commission recommendations to the various sections of the bill remain applicable except to the extent they are replaced or supplemented by the revised and new Comments set out below. Unless otherwise indicated, all of the Comments are to sections of the Probate Code.

Code of Civil Procedure § 353 (amended). Death of party before expiration of limitation period

Comment. The part of Section 353(b) that related to commencement of an action to enforce insurance liability is restated in Probate Code Section 551 (statute of limitations) without substantive change. In certain circumstances, a creditor

claim in probate proceedings is a prerequisite to bringing an action against a decedent's personal representative. See Prob. Code § 9351.

Code of Civil Procedure § 1443 (amended). Payment to state

Comment. Section 1443 is amended to reflect the repeal of Probate Code Section 738 and its replacement by Probate Code Section 11428 (deposit for missing creditor), the repeal of Probate Code Section 1027 and its replacement, in part, by Probate Code Section 11900 (distribution to State of California), the repeal of Probate Code Section 1148 and its replacement by Probate Code Section 7643 (deposit with county treasurer), and the repeal of Probate Code Section 1144 and its replacement, in part, by Probate Code Section 7663 (distribution of property), which provides for escheat to the county.

Code of Civil Procedure § 1700 (repealed). Short title

Comment. Former Section 1700 is restated in Probate Code Section 350 without substantive change.

Code of Civil Procedure § 1700.1 (repealed). Construction of title

Comment. The part of former Section 1700.1 relating to definitions is restated in Probate Code Section 351 without substantive change. The parts of former Section 1700.1 relating to rules of construction and general provisions are omitted as unnecessary. See Prob. Code § 361 (provision in instrument controls).

Code of Civil Procedure § 1700.2 (repealed). Gender

Comment. Former Section 1700.2 is omitted as unnecessary.

Code of Civil Procedure § 1700.3 (repealed). Fiduciary

Comment. Former Section 1700.3 is restated in Probate Code Section 39 and generalized to apply to the entire Probate Code. See also Prob. Code § 82 ("trust" defined).

Code of Civil Procedure § 1700.4 (repealed). Trusts

Comment. Former Section 1700.4 is omitted as unnecessary in view of the definition in Probate Code Section 82.

Code of Civil Procedure § 1700.5 (repealed). Court trusts; private trusts

Comment. Former Section 1700.5 is omitted as unnecessary. As revised, the Fiduciaries' Wartime Substitution Law does not make any distinction between court trusts and private trusts.

Code of Civil Procedure § 1700.6 (repealed). Consultant

Comment. Former Section 1700.6 is restated in Probate Code Section 352 without substantive change.

Code of Civil Procedure § 1700.7 (repealed). War service

Comment. Former Section 1700.7 is restated in Probate Code Section 356 without substantive change, except that the former reference to the part of the continental United States below the 49th parallel is replaced by a reference to the fifty states. Some obsolete references have been omitted in favor of general language in the new statute. Subdivision (e) of former Section 1700.7 is divided into subdivisions (e) and (f) in Probate Code Section 356 and subdivision (f) is designated as subdivision (g) in Probate Code Section 356.

Code of Civil Procedure § 1700.8 (repealed). Residence of corporate fiduciary

Comment. Former Section 1700.8 is omitted. The residence of corporate fiduciaries for purposes of determining venue is governed by other law. See Prob. Code §§ 2202 (guardianship and conservatorship), 7051-7052 (decedent's estate administration), 17005 (trusts). See also Prob. Code § 365 (jurisdiction of proceedings).

Code of Civil Procedure § 1701 (repealed). Petition

Comment. The first sentence of former Section 1701 is restated in Probate Code Section 370(a) without substantive change. The second sentence is superseded by Probate Code Section 365. See the Comment to Prob. Code § 365.

Code of Civil Procedure § 1701.1 (repealed). Notice

Comment. Former Section 1701.1 is superseded by Probate Code Section 366.

Code of Civil Procedure § 1701.2 (repealed). Accounting; suspension of powers

Comment. The first sentence of former Section 1701.2 is superseded by Probate Code Section 370(b)-(c). See the Comment to Prob. Code § 370. The second and third sentences are restated in Probate Code Section 373 without substantive change, except that the part of the second sentence relating to notice is superseded by Probate Code Section 366.

Code of Civil Procedure § 1701.3 (repealed). Cofiduciary

Comment. Former Section 1701.3 is restated in Probate Code Section 370(a) without substantive change.

Code of Civil Procedure § 1701.4 (repealed). Powers of substitute

Comment. Former Section 1701.4 is restated in Probate Code Section 371 without substantive change. The reference to cofiduciaries is omitted as unnecessary. See Prob. Code §§ 370, 380, and the Comments thereto.

Code of Civil Procedure § 1701.5 (repealed). Multiple trustees

Comment. Former Section 1701.5 is omitted as unnecessary. This section appears to be intended to avoid the application of the doctrine of merger. However, since the enactment of the Fiduciaries' Wartime Substitution Law in 1943, the doctrine has been severely restricted. See Prob. Code § 15209 (exception to doctrine of merger).

Code of Civil Procedure § 1701.6 (repealed). Bond of substitute

Comment. Former Section 1701.6 is restated in Probate Code Section 372, except that the new provision adds court authority to vary the bond requirement.

Code of Civil Procedure § 1701.7 (repealed). Responsibility for acts of predecessor

Comment. Former Section 1701.7 is restated in Probate Code Section 374 without substantive change, except that the provision relating to the duty to inquire into the acts of the predecessor is omitted for consistency with Probate Code Sections 383 (which restates former Section 1702.4) and 388 (which restates former Section 1703.3).

Code of Civil Procedure § 1702 (repealed). Delegation of powers

Comment. The first and second sentences of former Section 1702 are restated in Probate Code Section 380(a) without substantive change. The third sentence is superseded by Probate Code Section 365. See the Comment to Prob. Code § 365.

Code of Civil Procedure § 1702.1 (repealed). Petitions for delegation and resumption

Comment. The first sentence of former Section 1702.1 is superseded by Probate Code Sections 365 (jurisdiction of proceedings) and 380(b) (delegation authorized). The second sentence is superseded by Probate Code Section 366. See the Comment to Prob. Code § 366. The third sentence is restated in Probate Code Section 382 without substantive change.

Code of Civil Procedure § 1702.2 (repealed). Exceptions to right of delegation

Comment. The introductory clause and subdivision (a) of former Section 1702.2 are restated in Probate Code Section 381 without substantive change.

Subdivision (b) is omitted as unnecessary. See the Comment to former Section 1701.5.

Code of Civil Procedure § 1702.3 (repealed). Personal powers

Comment. Former Section 1702.3 is omitted as unnecessary. By definition, personal powers may not be exercised by a person other than the one to whom they were given. The provisions relating to the absence of a power to delegate are unnecessary, since the procedure for substitution of fiduciaries is applicable by its terms. The availability of the substitution procedure does not depend upon a finding that the original fiduciary is not precluded by the governing instrument from voluntarily delegating powers.

Code of Civil Procedure § 1702.4 (repealed). Liability for acts or omissions of delegate

Comment. Former Section 1702.4 is restated in Probate Code Section 383 without substantive change.

Code of Civil Procedure § 1703 (repealed). Delegation by consultant

Comment. Former Section 1703 is restated in Probate Code Section 385 without substantive change.

Code of Civil Procedure § 1703.1 (repealed). Substitution of consultant

Comment. The introductory part of former Section 1703.1 is superseded by Probate Code Sections 365 (jurisdiction) and 366 (notice). See the Comments to Prob. Code §§ 365, 366.

Subdivisions (a) and (b) are restated in Probate Code Section 386 without substantive change.

Code of Civil Procedure § 1703.2 (repealed). Reinstatement of consultant

Comment. Part of the first sentence of former Section 1703.2 is superseded by Probate Code Section 366 (notice). The remainder of Section 1703.2 is restated in Probate Code Section 387 without substantive change.

Code of Civil Procedure § 1703.3 (repealed). Responsibility of consultant

Comment. Former Section 1703.3 is restated in Probate Code Section 388 without substantive change.

Code of Civil Procedure § 1704 (repealed). Notice

Comment. Former Section 1704 is superseded by Probate Code Section 366. See the Comment to Prob. Code § 366.

Code of Civil Procedure § 1704.1 (repealed). Finding

Comment. Former Section 1704.1 is omitted as unnecessary. The general provisions governing proof of notice and conclusiveness of orders in Probate Code Sections 1260-1265 are applicable to the Fiduciaries' Wartime Substitution Law as located in Probate Code Sections 350-388.

Code of Civil Procedure § 1705 (repealed). Instrument controls

Comment. Former Section 1705 is superseded by Probate Code Section 361.

Code of Civil Procedure § 1706 (repealed). Application of title

Comment. Former Section 1706 is superseded by Probate Code Section 360. See the Comment to Prob. Code § 360.

Government Code § 27433 (added). Termination of authority of public guardian

Comment. The first sentence of Section 27433 restates former Welfare and Institutions Code Section 8005 without substantive change. The second sentence is new; it recognizes that letters may be issued to the office instead of the individual (Probate Code Section 2922) pursuant to existing practice in some counties.

Government Code § 27434 (added). Official bond

Comment. Section 27434 restates former Welfare and Institutions Code Section 8008 without substantive change. See also Probate Code Section 2922 (letters, oath, and bond). The public guardian is allowed a bond fee as an expense of administration. Probate Code Section 2942 (expenses of public guardian).

Probate Code § 3 (added). General transitional provision

Comment. Section 3 provides general transitional rules applicable to changes in the Probate Code. The general rule prescribed in subdivision (c) is that a new law applies immediately on its operative date to all matters, including pending proceedings. The general rule is qualified by the exceptions listed in subdivisions (d) (contents, execution, and notice of papers and documents are governed by the law applicable when the paper or document was filed), (e) (orders are governed by the law applicable when the order was made, subject to any applicable modification procedures in the new law), and (f) (acts are governed by the law applicable when the act was done).

Where a new law fails to address a matter that occurred before its operative date, subdivision (g) makes clear that the old law continues to govern the matter.

The rules stated in Section 3 are general provisions that apply absent a special rule stated in the new law. Special rules may defer or accelerate application of the new law despite the general rules stated in Section 3. See subdivision (b).

Because it is impractical to attempt to deal with all the possible transitional problems that may arise in the application of the new law to various circumstances, subdivision (h) provides a safety-valve that permits the court to vary the application of the new law where there would otherwise be a substantial impairment of procedure or justice. This provision is intended to apply only in the extreme and unusual case, and is not intended to excuse compliance with the basic transitional provisions simply because of minor inconveniences or minor impacts on expectations or other interests.

In addition to governing other substantive provisions, Section 3 also governs itself. It therefore becomes operative on July 1, 1989, and applies to provisions enacted and operative before, on, or after that date.

Probate Code § 39 (added). “Fiduciary” defined

Comment. Section 39 continues former Section 21100(a) without change and restates former Code of Civil Procedure Section 1700.3 without substantive change. Section 39 expands the scope of the former provisions, however, since it applies to all parts of the code to which the definitions apply. See Section 20 (application of definitions). The defined term is used in Sections 360-388 (substitution and delegation of powers of fiduciaries) as well as in Division 11 (commencing with Section 21101) (construction of wills, trusts, and other instruments).

Probate Code § 45 (added). “Instrument” defined

Comment. Section 45 continues former Section 21100(b) without change. Section 45 expands the scope of the former provision, however, since it applies to all parts of the code to which the definitions apply. See Section 20 (application of definitions). The defined term is used in Sections 360-388 (substitution and delegation of powers of fiduciaries) as well as in Division 11 (commencing with Section 21101) (construction of wills, trusts, and other instruments).

Probate Code § 52 (amended). Letters

Comment. Section 52 is amended by adding subdivision (b) for drafting convenience.

Probate Code § 58 (amended). Personal representative

Comment. Section 58 is amended to correct terminology and a section reference.

Probate Code § 81 (added). “Transferor” defined

Comment. Section 81 continues former Section 21100(c) without change. Section 81 expands the scope of the former provision, however, since it applies to all parts of the code to which the definitions apply. See Section 20 (application of definitions).

Probate Code § 300 (added). Appointment of trust company

Comment. Section 300 restates former Section 480, but omits the reference to a trust company acting as a trustee. This matter is governed by Section 15602 (trust law).

Probate Code § 301 (added). Oath and bond of trust company

Comment. Section 301 restates former Section 481 without substantive change.

Probate Code § 303 (repealed). Disqualification; transfer

Comment. Subdivision (a) of former Section 303 is restated in Section 7060 (disqualification of judge) without substantive change.

Subdivision (b) is restated in Sections 7070 (grounds for transfer) and 7071 (place of transfer). See also Section 1000 (general rules of civil practice); Code Civ. Proc. § 399 (transmittal of papers; jurisdiction of receiving court).

Subdivision (c) is restated in Section 7060(c) (disqualification of judge) without substantive change.

Probate Code § 321 (repealed). Production of will; attendance of witnesses

Comment. Former Section 321 is restated in Sections 8201 (order for production of will), 7050 (authority of court or judge), and 1000 (general rules of practice).

Probate Code § 322 (repealed). Purchaser or encumbrancer of real property

Comment. Former Section 322 is omitted. The section's major effect was to enable a title insurer to provide insurance in the occasional case in which title is insured in a purchaser from an heir without requiring administration proceedings, the

insurance being predicated on the property's small value and satisfactory proof (usually by affidavit) of heirship. 2 A. Bowman, *Ogden's Revised California Real Property Law* § 29.81, at 1498 (1975). For this purpose, Sections 13200-13209 (affidavit procedure for real property of small value) provide a more complete and detailed procedure.

Probate Code § 327 (repealed). Publication of notice

Comment. Former Section 327 is restated in Section 8003 (setting and notice of hearing), except that the petitioner rather than the clerk has the duty of giving notice.

Probate Code § 328 (repealed). Service of notice

Comment. The first sentence of the first paragraph of former Section 328 is restated in Sections 8110 (persons on whom notice served), 1201 (notice not given to petitioner), 1215 (manner of mailing), 1217 (service by mail or personal delivery), with the addition of a provision limiting service to known heirs. The second sentence is restated in Section 8100 (form of notice).

The second paragraph is restated in Sections 8111 (service on Attorney General) and 1215 (manner of mailing) without substantive change.

Probate Code § 328.7 (repealed). Conditional validity of will

Comment. Former Section 328.7 is restated in Section 6105 (conditional will) without substantive change.

Probate Code § 333 (repealed). Notice of death and petition for probate

Comment. Subdivision (a) of former Section 333 is restated in Section 8121 (publication of notice), but the posting provision is omitted because it is no longer necessary.

The introductory part of subdivision (b) is restated in Section 8123 (type size) without substantive change. The remainder of subdivision (b) is restated in Section 8100 (form of notice), except that reference to notice of the decedent's death is eliminated from the caption and a reference to the decedent's will is added to the notice.

Subdivision (c) is restated in Section 8124 (affidavit of publication) without substantive change.

Subdivision (d) is not continued because it is no longer necessary.

The substance of subdivision (e) is continued in Section 8100 (form of notice).

Probate Code § 350 (added). Short title

Comment. Section 350 restates former Code of Civil Procedure Section 1700 without substantive change.

Probate Code § 351 (added). Application of definitions

Comment. Section 351 restates part of former Code of Civil Procedure Section 1700.1 without substantive change.

Probate Code § 352 (added). Consultant

Comment. Section 352 restates former Code of Civil Procedure Section 1700.6 (consultant under a trust) without substantive change.

Probate Code § 353 (added). Estate

Comment. Section 353 is intended for drafting convenience.

Probate Code § 354 (added). Interested person

Comment. Section 354 is intended for drafting convenience.

Probate Code § 355 (added). Original fiduciary

Comment. Section 355 is intended for drafting convenience.

Probate Code § 356 (added). War service

Comment. Section 356 restates former Code of Civil Procedure Section 1700.7 without substantive change, except that the former reference to the part of the continental United States below the 49th parallel is replaced by a reference in subdivision (c) to the fifty states. In subdivision (a), the reference to the Air Force is new and the references to certain auxiliary organizations have been omitted as unnecessary in light of the general language. In subdivision (b), the reference to time of war is new.

Probate Code § 360 (added). Application of part

Comment. Section 360 supersedes former Code of Civil Procedure Section 1706. This part applies to personal representatives, trustees, guardians, conservators, and other legal representatives. See Section 39 (“fiduciary” defined).

Probate Code § 361 (repealed). Procedure; notice

Comment. The first sentence of former Section 361 is superseded by Sections 12510, 12520, 12521, and 12522. See the Comments to these sections. The second sentence is restated without substantive change in Section 12512 (procedure).

Probate Code § 361 (added). Provision in instrument controls

Comment. Section 361 supersedes former Code of Civil Procedure Section 1705.

Probate Code § 365 (added). Jurisdiction of proceedings

Comment. Section 365 supersedes the second sentence of former Section 1701, the third sentence of former Code of Civil Procedure Section 1702, and part of the first sentence of former Code of Civil Procedure Section 1702.1. For the proper court in a decedent's estate, see Sections 7050-7052. For the proper court in a guardianship or conservatorship estate, see Sections 2200-2203. For the proper court in a trust estate, see Sections 17000-17005.

Probate Code § 366 (added). Notice of hearing

Comment. Section 366 supersedes former Code of Civil Procedure Section 1701.1, part of the second sentence of former Code of Civil Procedure Section 1701.2, the second sentence of former Code of Civil Procedure Section 1702.1, the introductory part of former Code of Civil Procedure Section 1703.1, part of the first sentence of former Code of Civil Procedure Section 1703.2, and former Code of Civil Procedure Section 1704. Notice under this part is subject to general provisions governing notice under this code. See, e.g., Sections 1201 (notice not required to be given to oneself or persons joining in petition), 1202 (additional notice on court order), 1206 (notice to known heirs or devisees), 1215-1217 (mailing in general), 1260-1265 (proof of giving notice).

Probate Code § 370 (added). Petition for appointment of substitute, suspension of powers, or account

Comment. Subdivision (a) of Section 370 restates the first sentence of former Code of Civil Procedure Section 1701 and former Code of Civil Procedure Section 1701.3 without substantive change. Subdivisions (b) and (c) supersede the first

sentence of former Code of Civil Procedure 1701.2. Where there is a cofiduciary, appointment of a substitute fiduciary may be unnecessary, since the cofiduciary may be authorized to act. See, e.g., Sections 2105 (authority of joint guardian or conservator to act), 9630 (authority of joint personal representative to act), 15622 (temporary incapacity of cotrustee). This section does not apply to the extent the will, trust, or other instrument provides a different rule. Section 361 (provision in instrument controls).

Probate Code § 371 (added). Powers and duties of substitute fiduciary

Comment. Section 371 restates former Code of Civil Procedure Section 1701.4 without substantive change. The reference to duties is new.

Probate Code § 372 (repealed). Witnesses

Comment. Former Section 372 is restated in Section 8253 (evidence of execution), except that the limitation on production of witnesses outside the county is not continued. See also Section 1000 (general rules of practice govern) and Code Civ. Proc. § 1989 (compelling attendance of witnesses).

Probate Code § 372 (added). Bond of substitute fiduciary

Comment. Section 372 restates former Code of Civil Procedure Section 1701.6 without substantive change, except for the addition of court authority to vary the bond requirement. This would be appropriate, for example, where the instrument has waived the bond for the original fiduciary and it would be inappropriate to waive bond for the substitute fiduciary.

Probate Code § 373 (added). Reinstatement of original fiduciary

Comment. Section 373 restates the second and third sentences of former Code of Civil Procedure Section 1701.2 without substantive change, except that the court is given discretion not to remove the substitute fiduciary. In certain circumstances, the court may determine that it is advisable to retain the substitute as a cofiduciary upon reinstatement of the original fiduciary.

Probate Code § 374 (added). Fiduciary's immunity for predecessor's acts

Comment. Section 374 restates part of former Code of Civil Procedure Section 1701.7 without substantive change. Unlike the former law, this section is phrased in terms of liability rather than responsibility.

Probate Code § 380 (added). Delegation of fiduciary's powers

Comment. Subdivision (a) of Section 380 restates the first and second sentences of former Code of Civil Procedure Section 1702 without substantive change. Where there is a cofiduciary, delegation of power may be unnecessary, since the cofiduciary may be authorized to act. See, e.g., Sections 15622 (temporary incapacity of cotrustee), 9630 (authority of joint personal representative to act), 2105 (authority of joint guardian or conservator to act). The authority to delegate powers to a cofiduciary under this chapter is an exception to the usual duty not to delegate. See Section 16012 (duty not to delegate to cotrustee). This section does not apply to the extent the will, trust, or other instrument provides a different rule. See Section 361 (provision in instrument controls).

Subdivision (b) supersedes the first sentence of former Code of Civil Procedure Section 1702.1.

Probate Code § 381 (added). Limitations on delegation

Comment. Section 381 restates the introductory clause and subdivision (a) of former Code of Civil Procedure Section 1702.2 without substantive change. Where there is a cofiduciary, delegation of power may be unnecessary, since the cofiduciary may be authorized to act. See, e.g., Sections 2105 (authority of joint guardian or conservator to act), 9630 (authority of joint personal representative to act), 15622 (temporary incapacity of cotrustee).

Probate Code § 382 (repealed). Revocation of probate

Comment. Former Section 382 is superseded by Sections 8271(b) (summons) and 8272 (revocation). The provision for a jury trial is not continued. See Section 7200 (trial by jury).

Probate Code § 382 (added). Resumption of fiduciary's powers

Comment. Section 382 restates the third sentence of former Code of Civil Procedure Section 1702.1 without substantive change.

Probate Code § 383 (added). Fiduciary's immunity for delegate's acts

Comment. Section 383 restates former Code of Civil Procedure Section 1702.4 without substantive change. Unlike the former law, this section is phrased in terms of liability rather than responsibility.

Probate Code § 385 (added). Delegation of consultant's powers

Comment. Section 385 restates former Code of Civil Procedure Section 1703 without substantive change. This section does not apply to the extent the will, trust, or other instrument provides a different rule. Section 361 (provision in instrument controls).

Probate Code § 386 (added). Suspension of consultant's powers

Comment. Section 386 restates former Code of Civil Procedure Section 1703.1 without substantive change.

Probate Code § 387 (added). Resumption of consultant's powers

Comment. Section 387 restates former Code of Civil Procedure Section 1703.2 without substantive change.

Probate Code § 388 (added). Consultant's immunity for delegate's acts

Comment. Section 388 restates former Code of Civil Procedure Section 1703.3 without substantive change. Unlike the former law, this section is phrased in terms of liability rather than responsibility.

Probate Code § 402 (added). Qualification examination

Comment. Section 402 restates former Section 1306, deleting the references to the State Personnel Board. The State Personnel Board no longer administers the examination. The Controller

currently contracts with Cooperative Personnel Services, an agency created through a joint powers agreement, for administration of the examination.

Probate Code § 405 (added). Revocation of appointment of probate referee

Comment. Section 405 restates the first sentence of former Section 1308(b) without substantive change. Revocation of appointment under Section 405 is independent of revocation under Section 404 (standards for probate referee).

Probate Code § 406 (added). Termination of authority

Comment. Subdivision (a) of Section 406 restates former Section 1309 without substantive change. Subdivision (b) codifies existing practice. Other termination pursuant to law includes resignation.

Probate Code § 407 (added). Political activities of probate referees

Comment. Subdivisions (a) and (d) of Section 407 restate former Section 1311, with the addition of references to incumbency, reappointment, and committees, and the deletion of references to campaigns (other than campaigns for Controller) and seeking appointment. The two hundred dollar limitation of subdivision (a)(1) is extended to apply during a person's tenure as probate referee as well as during the time a person is an applicant for appointment. The two hundred dollar limitation does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited.

Subdivision (b) is new. It is intended to facilitate compliance with the other requirements of this section.

Subdivision (c) restates former Section 1312, with the added requirement of removal from office. The former transitional provision is replaced by a new transitional provision in subdivision (e).

Probate Code § 408 (added). Appointment of probate referee before operative date

Comment. Section 408 is new. It is a transitional provision intended to save an appointment made under the old law that could not necessarily be made under the new law. Revocation of

an appointment made under the old law is authorized only under the revocation provisions of the new law.

Probate Code § 409 (repealed). Administrators with will annexed

Comment. The first sentence of former Section 409 is restated in Section 8442 (authority of administrator with will annexed), with the addition of court discretion to permit exercise of a discretionary power or authority. The second and third sentences are superseded by Section 8441 (priority for appointment).

Probate Code § 422 (repealed). Priority for appointment as administrator

Comment. Former Section 422 is restated in Sections 8460 (appointment of administrator), 8461 (priority for appointment), 8462 (priority of relatives), and 8463 (surviving spouse). The new provisions include language to reflect changes in the law governing intestate succession and to recognize the priority of relatives of a predeceased spouse. The new provisions are expanded to include any relative of the decedent who satisfies prescribed conditions.

Probate Code § 440 (repealed). Petition for letters

Comment. The introductory portion of former Section 440 is superseded by Section 1020 (petitions, reports, accounts). The first paragraph is superseded by Section 8002(a) (contents of petition). The last paragraph is restated in Section 8006(b) (court order) without substantive change.

Probate Code § 441 (repealed). Notice of hearing

Comment. The first two sentences of former Section 441 are restated in Sections 8003 (setting and notice of hearing), 8110 (persons on whom notice served), and 1041 (clerk to set matters for hearing), except that the petitioner rather than the clerk has the duty of giving notice. See also Section 1215 (manner of mailing). The third sentence is restated in Section 8100 (form of notice) without substantive change.

Probate Code § 451 (repealed). Proceedings for revocation

Comment. Former Section 451 is superseded by Section 8500 (procedure for removal) and Article 7 (commencing with Section 8520) (changes in administration) of Chapter 4 of Part 2 of Division 7.

Probate Code § 462 (repealed). Bond and oath

Comment. Subdivisions (a) and (b) of former Section 462 are restated in Section 8542 (issuance of letters) without substantive change. Subdivision (c) (1) is restated in Section 8481 (waiver of bond) without substantive change. Subdivision (c) (2) is restated in Section 8543 (waiver of bond) without substantive change.

Probate Code § 467 (repealed). Account, fees, commissions

Comment. The first sentence of former Section 467 is restated in Section 8546(c) (termination of authority), with the addition of language expressly permitting a consolidated account where the special administrator and general personal representative are the same person. The second sentence is restated in Section 8547(a)-(c) (fees and commissions), with the addition of provisions limiting payment of the special administrator until close of administration (except for extra allowances) and recognizing agreements of the special administrator, personal representative, and attorneys as to division of fees and commissions.

Probate Code § 468 (repealed). Division of commissions and fees

Comment. Former Section 468 is restated in Section 8547(b)-(c) (fees and commissions), with the addition of provisions limiting payment of the special administrator until close of administration (except for extra allowances) and recognizing agreements of the special administrator, personal representative, and attorneys as to division of fees and commissions.

Probate Code § 501 (repealed). Form of letters testamentary or with will annexed

Comment. Former Section 501 is superseded by Sections 8405 (form of letters) and 1001 (Judicial Council to prescribe forms).

Probate Code § 502 (repealed). Form of letters of administration or special administration

Comment. Former Section 502 is superseded by Sections 8405 (form of letters) and 1001 (Judicial Council to prescribe forms).

Probate Code § 540 (repealed). Oath

Comment. Former Section 540 is restated in Section 8403 (oath), with the addition of authority to sign the oath at the time the petition is signed.

Probate Code § 541 (repealed). Bond

Comment. The first sentence of subdivision (a) of former Section 541 is restated in Sections 8480 (bond required) and 8481 (a) (waiver of bond), and in Code of Civil Procedure Section 166 (actions in chambers), without substantive change. The second sentence is superseded by Section 8482(a)-(b) (amount of bond), which makes explicit the authority of the court to impose a fixed minimum bond.

Subdivision (b) is restated in Section 8481(a)(2) (waiver of bond) without substantive change.

Probate Code § 542 (repealed). Bond for sale of real property

Comment. Former Section 542 is superseded by Section 8482(c) (amount of bond).

Probate Code § 543 (repealed). Bond required by court

Comment. Former Section 543 is restated in Section 8481(b) (waiver of bond) without substantive change.

Probate Code § 554 (added). Damages

Comment. Subdivision (a) of Section 554 restates former Section 721(a) without substantive change, but makes clear that the rule limiting recovery is subject to the exception provided in subdivision (b). Subdivision (b) is generalized from the second sentence of former Section 707. See also the Comment to Section 550.

Probate Code § 600 (repealed). Filing inventory and appraisement

Comment. The first part of the first sentence of former Section 600 is superseded by Section 8800 (inventory and appraisal required). See also Code Civ. Proc. § 166 (actions in

chambers). The last part of the first sentence is superseded by Section 8404 (statement of duties and liabilities).

The second sentence is omitted because it no longer serves a useful purpose. The third and fourth sentences are restated in Section 8850 (contents of inventory) without substantive change. The fifth sentence is restated in Section 8802 (form of inventory and appraisal) without substantive change.

Probate Code § 602 (repealed). Testator's claim against executor

Comment. Former Section 602 is continued in Section 9605 (claims against personal representative) without substantive change. See also Section 8851 (discharge or devise of claims).

Probate Code § 608.5 (repealed). Objection to appraisal

Comment. Former Section 608.5 is restated in Section 8906 (objection to appraisal) without substantive change.

Probate Code § 611 (repealed). Newly discovered property

Comment. Former Section 611 is superseded in part by Section 8801 (supplemental inventory and appraisal) and restated in part in Section 8804 (failure to timely file inventory and appraisal) without substantive change.

Probate Code § 613 (repealed). Citation of suspected embezzler, etc.

Comment. The first two sentences of former Section 613 are restated in Section 8870 (citation to appear and be examined concerning decedent's property), substituting a petition for a complaint. The third sentence is superseded by Section 8872 (examination).

Probate Code § 614 (repealed). Examination of suspected embezzler, etc.

Comment. The first sentence of former Section 614 is superseded by Section 8870(c) (citation to appear and be examined concerning decedent's property). The third sentence is restated in Section 8871 (interrogatories) without substantive change. The second and fourth sentences are restated in Section 8872 (examination).

Probate Code § 615 (repealed). Citation of person entrusted with part of estate

Comment. Former Section 615 is restated in Section 8873 (citation to appear and account), substituting a petition for a complaint.

Probate Code § 662 (repealed). Kinds of legacies

Comment. The first part of subdivision (a) of former Section 662 is restated in Section 6154(a) (specific devise) without substantive change. The last part of subdivision (a) (if specific gift fails, resort cannot be had to testator's other property) is superseded by Sections 21402 (order of abatement) and 6171-6173 (ademption).

Subdivision (b) is restated in Section 6154(c) (demonstrative devise) without substantive change.

The first part of subdivision (c) is restated in Section 6154(e) (annuity) without substantive change. The last part of subdivision (c) is restated in Section 21403(b) (abatement within classes) without substantive change.

Subdivision (d) is restated in Section 6154(f) (residuary devise) without substantive change.

Subdivision (e) is superseded by Section 6154(b) (general devise).

Probate Code § 707 (repealed). Insured claim

Comment. Former Section 707 is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9390 (claim covered by insurance).

Probate Code § 709 (repealed). Claim pending against decedent

Comment. The first two sentences of former Section 709 are restated in Section 9370 (claim prerequisite to continuing action) with the addition of a requirement that the plaintiff act to substitute the personal representative as a party within three months after rejection of the claim. The third sentence is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9390 (claim covered by insurance).

The fourth sentence of the first paragraph and the second and third paragraphs of former Section 709 are restated in Section 9103 (late claim), with clarifying and generalizing changes made to combine it with former Section 720.

Probate Code § 709.1 (repealed). Continuation of pending action against estate

Comment. Former Section 709.1 is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9390 (claim covered by insurance).

Probate Code § 716 (repealed). Enforcement of lien

Comment. Former Section 716 is restated in Section 9391 (enforcement of security interest), omitting the provision relating to attorney's fees.

Probate Code § 721 (repealed). Claim for liability covered by liability insurance

Comment. Former Section 721 is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9390 (claim covered by insurance).

Probate Code § 900 (amended). Compensation of personal representative

Comment. Section 900 is amended to delete the portion relating to allowance of the necessary expenses in the care, management, and settlement of the estate. That portion is restated without substantive change in Section 11004. The other revisions in Section 900 are nonsubstantive.

Probate Code § 926 (repealed). Settlement of account

Comment. The first sentence of subdivision (a) of former Section 926 is restated in Section 1041 (clerk to set matter for hearing). The second sentence is restated in Sections 11000(d) (notice of hearing), 11641 (distribution under court order). Subdivisions (b) and (c) are restated in Section 11000 (notice of hearing) without substantive change.

Probate Code § 927 (repealed). Exceptions to account

Comment. The first sentence of former Section 927 is restated in Sections 11001 (contest of account) and 1043 (response or objection) without substantive change. The second sentence is superseded by Section 11003 (litigation expenses). The third and fifth sentences are restated in Section 11002(a) (hearing on account) without substantive change. The fourth sentence is restated in Section 11001 (contest of account) without substantive change. The last sentence is not continued because it is no longer necessary.

Probate Code § 933 (repealed). Waiver of accounting

Comment. Former Section 933 is restated in Section 10954 (when account is not required).

Probate Code § 1000 (repealed). Petition for preliminary distribution

Comment. The introductory part of the first half of subdivision (a) of former Section 1000 is restated in Sections 11620 (time for petition), 11621 (order for distribution), and 11622 (bond). The remainder of the first half of subdivision (a) is restated without substantive change in Section 11600 (petition for distribution). The second half of subdivision (a) of former Section 1000, applicable to estates of nondomiciliary decedents, is superseded by Section 12540.

Subdivisions (b) and (c) are restated in Section 11601 (notice of hearing) with the addition of a provision for notice to the Controller. Subdivision (d) is restated without substantive change in Section 11602 (opposition to petition).

Probate Code § 1000 (added). General rules of practice

Comment. Section 1000 replaces the first, third, and fourth sentences of former Section 1280 and the first paragraph of former Section 1283. This section provides a default rule that applies in circumstances where there is no special rule applicable in probate proceedings. For example, the general rules of practice apply to discovery, trials, new trials, appeals, and other matters of procedure. General rules of the Code of Civil Procedure do not apply, however, where this code provides a special rule. For example, jury trials are strictly limited in proceedings under this code. See Sections 1452 (jury trials in guardianship and conservatorship proceedings), 7200 (jury trials in estate administration), 17006 (jury trials in trust administration). The right to make a motion for a new trial in proceedings for administration of a decedent's estate is limited in Section 7220. The right to appeal in decedent estate administration is limited to the orders set out in Section 7240. Many other limitations are provided in this chapter and in other provisions throughout this code. This general rule is also subject to the rulemaking power of the courts. See Section 1001.

Probate Code § 1002 (added). Costs

Comment. Section 1002 restates former Section 1282 without substantive change. For special provisions relating to costs, see, e.g., Sections 6544 (costs of proceedings for family allowance), 9255 (costs where creditor contests amount of allowed claim), 9257 (disallowed creditor's claim by representative), 9653 (costs in action to recover fraudulently conveyed property), 11624 (costs on preliminary distribution). See also Code Civ. Proc. § 1026 (costs in actions involving fiduciary estate).

Probate Code § 1004 (repealed). Petition by personal representative

Comment. Former Section 1004 is restated without substantive change in Sections 11623 (distribution under Independent Administration of Estates Act), 1041 (clerk to set matters for hearing), and 11621 (order for distribution).

Probate Code § 1020 (repealed). Petition for final distribution

Comment. The first sentence of subdivision (a) of former Section 1020 is restated without substantive change in Sections 11640 (petition and order) and 11600 (petition for distribution). The second sentence is restated without substantive change in Sections 11602 (opposition to petition) and 9630(d)(1) (authority of joint personal representatives to act).

Subdivisions (b) and (c) are restated in Section 11601 (notice of hearing).

Probate Code § 1020.1 (repealed). Distribution to transferees

Comment. Former Section 1020.1 is restated in Section 11604 (distribution to person other than beneficiary), standardizing the manner of notice with other provisions in the code.

Probate Code § 1022 (repealed). Intestate minor

Comment. Former Section 1022 is restated in Sections 11801-11802 (deceased distributee), which substitute emancipation for marriage.

Probate Code § 1027 (repealed). Time for petition for distribution

Comment. The first sentence of subdivision (a) of former Section 1027 is restated without substantive change in Section 11640 (petition and order). The remainder of subdivision (a) is restated without substantive change in Section 11900 (distribution to State of California).

Subdivision (b) is continued without change in Section 11601(a) (notice of hearing). Subdivision (c) is continued without change in Section 11601(b) (notice of hearing).

Subdivision (d) is restated without substantive change in Section 11601 (notice of hearing), except that the provision for 30 days notice is not continued. Subdivision (e) is restated without substantive change in Section 11901 (distribution in trust for a class).

Subdivisions (f) and (g) are restated without substantive change in Section 11902 (disposition of property distributed to state). Subdivision (h) is restated without substantive change in Sections 11904 (no deposit in county treasury) and 7622 (general rules governing administration of estates apply to public administrator). Subdivisions (i) and (j) are restated without substantive change in Section 11903 (claims against property distributed to state).

Probate Code § 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Section 1041 is superseded by Section 12540 (conditions for distribution to sister state personal representative). The part of the second sentence of former Section 1041 that required the clerk to set the petition for hearing is continued in Section 1041 (clerk to set matters for hearing). The part of the second sentence of former Section 1041 concerning notice and all of the third sentence are superseded by Sections 12540 and 1043 (response or objection).

Probate Code § 1050 (added). Judgment roll

Comment. Section 1050 restates former Section 1299 without substantive change. However, the former provision stating that the papers constituting the judgment roll need not be attached together is omitted as unnecessary. The reference to the statement of decision in subdivision (a) (6) is new. The reference in former Section 1299(c) to partial and ratable distributions has

been replaced by a reference to preliminary distributions in subdivision (d).

Probate Code § 1068 (repealed). Discharge

Comment. Former Section 1068 is restated without substantive change in Sections 12251 (discharge without administration), 1021 (verification required), and 1041 (clerk to set matter for hearing).

Probate Code § 1081 (repealed). Trial

Comment. The first sentence of the first paragraph of former Section 1081, providing for jury trial, is not continued. *Cf.* Section 7200 (trial by jury). The second and third sentences are restated without substantive change in Sections 11704 (hearing) and 11705 (court order). The second paragraph is superseded by Section 1000 (general rules of practice govern).

Probate Code § 1101 (repealed). Filing; citation

Comment. The first and second sentences of Section 1101 are restated in Section 11951 (petition). The third, fourth, and fifth sentences are superseded by subdivision (a) of Section 11952 (parties and notice).

Probate Code § 1215 (amended). Manner of mailing; when mailing complete

Comment. The reference in subdivision (c) to various facilities maintained by the United States Postal Service is simplified, consistent with contemporary usage. Deposit for collection in the United States mail includes deposit in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service.

Old subdivision (d) is relettered (e) and a new (d) is added to Section 1215 for completeness. It is drawn from Section 1220(d).

Probate Code § 1220 (amended). Manner of mailing notice of hearing

Comment. Subdivision (d) of Section 1220 is amended for conformity with Section 1215(d).

Probate Code § 1280 (repealed). Trials

Comment. The first sentence of former Section 1280 is superseded by Section 1000 (general rules of practice). See the Comment to Section 1000. The second sentence is restated in Section 1044 (plaintiff and defendant) without substantive change.

The third and fourth sentences are superseded by Sections 1000 (general rules of practice), 1452 (jury trial under guardianship and conservatorship law), 7200 (jury trial in estate administration), and 17006 (jury trial under Trust Law). See also Code Civ. Proc. §§ 309 (court may submit issue to jury not defined by pleadings), 631 (jury trial waived if not demanded).

The last sentence is restated in Sections 1048 (entry and filing) and 1049 (enforcement of order).

Probate Code § 1306 (repealed). Qualification examinations

Comment. Former Section 1306 is restated in Section 402 (qualification examination), deleting the references to the State Personnel Board. The State Personnel Board no longer administers the examination. The Controller currently contracts with Cooperative Personnel Services, an agency created through a joint powers agreement, for administration of the examination.

Probate Code § 1308 (repealed). Removal

Comment. Subdivision (a) of former Section 1308 is restated in Section 404(b) (standards for probate referee) without substantive change. Subdivision (b) is restated in Section 405 (revocation of appointment of probate referee) without substantive change.

Probate Code § 1309 (repealed). Cessation of authority

Comment. Former Section 1309 is restated in Section 406 (termination of authority) without substantive change.

Probate Code § 1311 (repealed). Political activities

Comment. Former Section 1311 is restated in Section 407(a) and (d) (political activities of probate referee) without substantive change.

Probate Code § 1312 (repealed). Persons formerly engaged in prohibited political activities

Comment. Former Section 1312 (with the exception of the last sentence) is restated in Section 407(c) (political activities of probate referee). The last sentence is omitted; it is a transitional provision that no longer serves a function.

Probate Code § 2100 (amended). Law governing guardianships and conservatorships

Comment. Section 2100 is amended to refer to the general provisions in Division 3 and to other relevant provisions governing administration of decedents' estates.

Probate Code § 2430 (amended). Payments from principal and income

Comment. Subdivision (a) (4) (v) is added to Section 2430 to ensure court review of the public administrator's costs and fee for taking possession or control of property where another person is ultimately appointed guardian or conservator.

Probate Code § 2903 (added). Transitional provision

Comment. Section 2903 is a specific application of portions of the general operative date and transitional provision. See Section 3.

Probate Code § 6154 (added). Classification of devises

Comment. Subdivision (a) of Section 6154 restates part of former Section 662(a) without substantive change. See also Estate of Ehrenfels, 241 Cal. App. 2d 215, 221, 50 Cal. Rptr. 358 (1966).

Subdivision (b) supersedes former Section 662(e) and is consistent with case law under the former provision. See, e.g., Estate of Jones, 60 Cal. App. 2d 795, 798, 141 P.2d 764 (1943).

Subdivision (c) restates former Section 662(b) without substantive change. The reference in subdivision (c) to a demonstrative devise as a "general" devise is new, but is consistent with prior law. See former Section 662(c) (if indicated fund fails, resort may be had to general assets as in case of general devise); 7 B. Witkin, Summary of California Law *Wills and Probate* § 214, at 5725 (8th ed. 1974) (same); Estate of Cline, 67 Cal. App. 2d 800, 804, 155 P.2d 390 (1945) (demonstrative devise

is “in the nature of” a general devise; reference to particular fund is for convenient method of payment); King, *Outright Testamentary Gifts*, in California Will Drafting § 8.68, at 372 (Cal. Cont. Ed. Bar 1982) (demonstrative gift is type of general gift). For the priority that a demonstrative devise has over other general devises, see Section 21403(b).

Subdivision (d) is new. It incorporates the definition of “pecuniary gift” provided in Section 21120(b) (“pecuniary gift” means a transfer of property made in an instrument that either is expressly stated as a fixed dollar amount or is a dollar amount determinable by the provisions of the instrument).

Subdivision (e) restates the first clause of former Section 662(c) without substantive change. The reference in subdivision (e) to an annuity as a “general” devise is new, but is consistent with the last clause of former Section 662(c) (if indicated fund fails, resort may be had to general assets as in the case of a general devise) and with case law. See *Estate of Luckel*, 151 Cal. App. 2d 481, 493-95, 312 P.2d 24 (1957) (annuity is a “general charge on the testator’s whole estate”). For the priority that an annuity has over other general devises, see Section 21403(b).

Subdivision (f) restates former Section 662(d) without substantive change.

Probate Code § 7050 (added). Jurisdiction and authority of court or judge

Comment. Subdivision (a) of Section 7050 restates a provision of former Section 300 and the introductory part of former Section 301 without substantive change. Subdivision (a) is comparable to Section 2200 (jurisdiction of guardianship and conservatorship proceedings). Proceedings concerning administration of a decedent’s estate include the probate of wills (Sections 8200-8272), appointment of personal representatives (Sections 8400-8577), and estate management (Sections 9600-10382). Where appropriate, the reference to the superior court in subdivision (a) means the department or judge of the court that deals with probate matters.

Subdivision (b) expands a provision of former Section 321 (the judge may make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses) and abandons the former rule that the superior court “sitting in probate” was a court of limited jurisdiction. See 7 B. Witkin, *Summary of California Law Wills and Probate* §§ 233-34, at 5741-43 (8th ed. 1974). Subdivision (b) makes clear that the

probate court, when considering cases brought before it under this division, has all the powers of the superior court exercising its general jurisdiction. Hence, while preserving the division of business among different departments of the superior court, this section rejects the limitation on the powers of the probate court that has been cited in appellate decisions. See, e.g., *Copley v. Copley*, 80 Cal. App. 3d 97, 106-07, 145 Cal. Rptr. 437 (1978). See also Section 17001 (full-power court under Trust Law).

Probate Code § 7060 (added). Disqualification of judge

Comment. Subdivisions (a) and (b) of Section 7060 restate subdivision (a) of former Section 303 without substantive change. For general provisions on disqualification, see Code Civ. Proc. §§ 170-170.8.

Subdivision (c) restates former Section 303(c) without substantive change.

Probate Code § 7070 (added). Grounds for transfer

Comment. Section 7070 restates part of subdivision (b) of former Section 303 without substantive change. Transfer of a proceeding under this article is in the same manner and with the same effect as transfer of actions and proceedings under the Code of Civil Procedure. See Section 1000 (general rules of practice govern); Code Civ. Proc. § 399 (transmittal of papers; jurisdiction of receiving court). These provisions supersede parts of former Sections 303 and 305.

Probate Code § 7071 (added). Place of transfer

Comment. Section 7071 is new. The provision for transfer to an adjoining county continues a provision of subdivision (b) of former Section 303.

Probate Code § 7240 (added). Appealable orders and refusals to make orders

Comment. Section 7240 restates former Section 1297 without substantive change, except as follows:

(1) Subdivision (a) codifies the former rules that orders granting or revoking letters of administration with the will annexed are appealable, but that letters of special administration or letters of special administration with general powers are not. See *Estate of Smith*, 175 Cal. App. 2d 803, 805, 1 Cal. Rptr. 46 (1959) (appeal of order appointing public administrator as

administrator with the will annexed); Estate of Hughes, 77 Cal. App. 3d 899, 901-02, 143 Cal. Rptr. 858 (1978) (order refusing to revoke letters of special administration not appealable); former Sections 461, 465.

(2) Language in subdivision (e) permitting the appeal of an order terminating a family allowance is new.

(3) Subdivision (g) relating to options is not limited to real property options as was former subdivision (g).

(4) The right to appeal from an order relating to determination of heirship (former subdivision (m)) is omitted because this procedure is not continued. See the Comment to former Section 1190.

(5) Former subdivision (p) relating to appeals concerning inheritance tax is replaced by Section 7242 (transitional provision).

Probate Code § 8003 (added). Setting and notice of hearing

Comment. Section 8003 restates former Sections 327 (probate of will) and 441 (application for letters), except that the petitioner rather than the clerk has the duty of giving notice.

Probate Code § 8110 (added). Persons on whom notice served

Comment. Section 8110 restates the first part of the first sentence of former Section 328 and a portion of the second sentence of former Section 441, but limits service on heirs to known heirs. See also Section 1202 (additional notice on court order). *Cf.* Section 9050 (notice to creditors).

Probate Code § 8113 (added). Notice involving foreign citizen

Comment. Section 8113 is drawn from Section 7.06 of the Los Angeles County Probate Policy Memorandum (1985). The section applies only if there is a recognized diplomatic or consular official of the particular foreign country maintaining an office in the United States. Whether a country has recognized diplomatic or consular representation in the United States may be ascertained from the United States Department of State.

Probate Code § 8121 (added). Publication of notice

Comment. Section 8121 restates subdivision (a) of former Section 333 but omits the posting provision, which is no longer necessary. The reference to the first publication date clarifies the former provision that, "Publication of notice pursuant to this section shall be for at least 15 days." The former reference to the "community" where the decedent resided is replaced by a reference to the "area of the county," since some decedents do not reside in communities.

Probate Code § 8200 (added). Delivery of will

Comment. Section 8200 supersedes former Section 320. Section 8200 requires delivery of the original will in all cases, precludes charging a filing fee, and adds a procedure for production of the delivered will.

Probate Code § 8201 (added). Order for production of will

Comment. Section 8201 restates a portion of former Section 321. The court or judge has general authority to enforce the production of wills and the attendance of witnesses. See Section 7050 (authority of court or judge).

Probate Code § 8220 (added). Evidence of subscribing witness

Comment. Section 8220 restates the first two sentences of former Section 329 and the last sentence of former Section 1283 without substantive change.

Probate Code § 8226 (added). Effect of admission of will to probate

Comment. Subdivision (a) of Section 8226 restates the first portion of former Section 384 without substantive change. The time within which a contest must be made is before or at the hearing (Section 1043), and the time within which revocation of probate may be sought is 120 days after the will is admitted or, in the case of a minor or incompetent person, before the close of estate administration (Section 8270). The conclusive effect of admission of a will to probate is subject to jurisdictional defects. See, e.g., *Estate of Sanders*, 40 Cal. 3d 607, 710 P.2d 232, 221 Cal. Rptr. 432 (1985) (extrinsic fraud); Section 8007 (determination of jurisdiction conclusive).

Subdivision (b) supersedes former Section 385. It is consistent with Estate of Moore, 180 Cal. 570, 182 P. 285 (1919) (admission of will does not preclude probate of another will). If more than one will is admitted to probate, the court should resolve any conflicts in provisions, including what provisions control nomination of an executor. Admission of a will to probate may not affect property previously distributed, but the court may order adjustments of gifts in light of a will later admitted to probate. The court may not, however, rescind a distribution once made as a result of a later discovery of a will.

One effect of subdivision (b) is to preclude probate of a will after close of administration as a general rule. In the case of after-discovered property, however, a later will would be admissible under subdivision (b) to govern distribution of the after-discovered property, notwithstanding Section 11642 (after-acquired or after-discovered property).

Probate Code § 8270 (added). Petition for revocation

Comment. Subdivision (a) of Section 8270 restates former Section 380 but omits reference to some of the specific grounds of opposition. A will is admitted to probate when it is recorded in the minutes by the clerk. Section 8225 (admission of will to probate).

Subdivision (b) supersedes the last portion of former Section 384. It limits the previously indefinite right of minors and incompetents to petition for revocation.

Probate Code § 8401 (added). Deposit in controlled account

Comment. Section 8401 restates subdivision (b) of former Section 541.1 without substantive change. See also Section 8483 (reduction of bond by deposit of assets).

Probate Code § 8405 (added). Form of letters

Comment. Section 8405 supersedes former Sections 500, 501, and 502. The Judicial Council may prescribe the form of letters. Section 1001 (Judicial Council and local court rules).

Probate Code § 8441 (added). Priority for appointment

Comment. Section 8441 supersedes the second and third sentences of former Section 409. The express references to nominees are new. For priority for appointment of an administrator, see Section 8461.

Subdivision (b) gives priority to devisees, who need not be entitled to succeed to all or part of the estate under the law of succession in order to have priority. However, subdivision (b) also gives the court discretion to disregard the priority of a devisee in an appropriate case where another person would take a substantial statutory intestate or omitted heir share.

Probate Code § 8461 (added). Priority for appointment

Comment. Section 8461 restates subdivision (a) of former Section 422, with the addition of subdivisions (d), (g), (h), and (i) to reflect changes in the law governing intestate succession. See Section 6402 (intestate share of heirs other than surviving spouse). The general order of priority prescribed in Section 8461 is subject to limitation in the succeeding sections of this article. See, e.g., Sections 8462 (priority of relatives), 8463 (surviving spouse). A person appointed must be legally competent. Section 8402 (qualifications).

Probate Code § 8465 (added). Nominee of person entitled to appointment

Comment. Section 8465 restates without substantive change provisions found in former Section 423. “Grandparent” and “issue” have been added to subdivision (b) consistent with Section 8461 (priority for appointment). The nominee is not entitled to appointment unless legally competent. Section 8402 (qualifications).

Probate Code § 8466 (added). Priority of creditor

Comment. Section 8466 restates the last portion of former Section 425 but omits the requirement that there be a request of another creditor before the court may appoint another person. Any person appointed under this section must be legally competent. Section 8402 (qualifications).

Probate Code § 8482 (added). Amount of bond

Comment. Subdivisions (a) and (b) of Section 8482 supersede the last sentence of former Section 541 (a), making explicit the authority of the court to impose a fixed minimum bond. Subdivision (c) supersedes former Section 542.

Probate Code § 8483 (added). Reduction of bond by deposit of assets

Comment. Section 8483 restates subdivision (a) of former Section 541.1 without substantive change. See also Section 2328 (guardianship and conservatorship). For the authority of a petitioner for appointment as personal representative to make a deposit described in this section, see Section 8401 (deposit in controlled account).

Probate Code § 8542 (added). Issuance of letters

Comment. Subdivisions (a) and (b) of Section 8542 restate subdivisions (a) and (b) of former Section 462 without substantive change. The bond must be conditioned that the special administrator will faithfully execute the duties of the office according to law. Section 8480 (bond required). The judge may approve the bond in chambers. Code Civ. Proc. § 166 (actions in chambers).

Subdivision (c) is new.

Probate Code § 8547 (added). Fees and commissions

Comment. Subdivisions (a)-(c) of Section 8547 restate former Sections 467-468, with the addition of provisions limiting payment of the special administrator until close of administration (except for extra allowances) and recognizing agreements of the special administrator, personal representative, and attorneys as to division of fees and commissions. Subdivision (d) supersedes former Section 469.

Probate Code § 8571 (added). Bond of nonresident personal representative

Comment. Section 8571 is new. It is a specific application of subdivision (b) of Section 8481 (waiver of bond).

Probate Code § 8800 (added). Inventory and appraisal required

Comment. Section 8800 supersedes the first portion of the first sentence of former Section 600. It extends the time for filing the inventory and appraisal from three to four months. The four-month period may be extended by the court either on prior authorization or by subsequent excuse. A further time might be reasonable, for example, in an estate for which a federal estate

tax return is necessary and additional time is required in order to ensure that the property is valued consistently.

The inventory and appraisal procedure provided in this part applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

See also Code Civ. Proc. § 166 (actions in chambers).

Probate Code § 8801 (added). Supplemental inventory and appraisal

Comment. Section 8801 supersedes former Section 611, extending the two-month time for filing to four months, parallel to Section 8800 (inventory and appraisal required). For enforcement of this requirement, see Section 8804 (failure to timely file inventory and appraisal).

Probate Code § 8804 (added). Failure to timely file inventory and appraisal

Comment. Section 8804 restates former Section 610 and a portion of former Section 611 without substantive change. The time allowed under this chapter for filing an inventory and appraisal includes any court extension of the statutory times under Sections 8800 (inventory and appraisal required) and 8801 (supplemental inventory and appraisal). Section 8804 is limited to negligent or willful noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file the inventory and appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3.

Subdivision (a) is new. It incorporates the procedure for compelling an account.

Subdivision (b) provides for removal as an independent sanction. For the removal procedure, see Article 6 (commencing with Section 8500) of Chapter 4 of Part 2 of Division 7. This supplements the removal sanction that is part of the procedure under subdivision (a) to compel a filing.

Under subdivision (c) liability for injury arising from the refusal or failure of the personal representative to timely file the inventory and appraisal may include attorney's fees incurred in proceedings to compel the filing. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 *et seq.*

Probate Code § 8872 (added). Examination

Comment. Subdivisions (a) and (b) of Section 8872 restate the second and fourth sentences of former Section 614. Subdivision (c) supersedes the third sentence of former Section 613. The court order of disclosure is enforceable in the same manner as other court orders. See, e.g., Code Civ. Proc. § 1209 (contempt); see also Prob. Code § 1000 (general rules of practice).

Probate Code § 8903 (added). Waiver of appraisal by probate referee

Comment. Section 8903 restates former Section 605(a), with changes to make clear that the application for waiver is made by petition, to specify the time within which the petition must be made, and to make clear that the inventory and appraisal attached to the petition is to be filed pursuant to Section 8800 (inventory and appraisal required).

Section 8903 also adds a requirement that if a probate referee opposes a waiver petition without substantial justification, the court must award litigation expenses against the referee. Moreover, a probate referee who opposes the petition ordinarily should not appraise the property in the estate. Neither the probate referee who opposed the petition, nor any other probate referee in the same office or with whom the referee has a financial arrangement, should appraise, share in the commission, or in any other manner benefit from the appraisal of property in the estate as a result of the opposition. However, the court in an unusual case may allow an appraisal by the opposing referee. For example, in a small county with only one referee where it is a

problem to obtain a referee from another county, the court might designate the opposing referee if in the court's judgment the situation is such that it is satisfactory to allow the opposing referee to appraise the property.

A waiver petition may be made under Section 8903 at any time before an inventory is delivered to the probate referee, including a combined waiver and petition to open administration or a combined waiver and petition for final distribution.

Probate Code § 8907 (added). Fee for appraisal by personal representative

Comment. Section 8907 restates former Section 605(c), and expands it to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate. It should be noted that the limitation in this section applies only to appraisal of property; it does not affect estate tax work performed by the attorney.

Probate Code § 8961 (added). Amount of commission and expenses

Comment. Section 8961 restates a portion of the first sentence and the second sentence of the first paragraph, and the second paragraph, of former Section 609 without substantive change. The commission provided by this section is subject to a maximum and minimum limitation pursuant to Section 8963.

Probate Code § 8980 (added). Transitional provision

Comment. Section 8980 is an exception to the general rule that all provisions of this part apply immediately on its operative date to pending proceedings. See Section 3.

Probate Code § 9103 (amended). Late claims

Comment. Section 9103 is amended to combine it with the fourth sentence of the first paragraph and the second and third paragraphs of former Section 709, which related to late claims in pending actions, and with former Section 720, which related to late claims involving causes of action not pending. The combination of provisions results in changes for purposes of clarification, generalization, and uniformity.

This section does not excuse the duty of the personal representative to give timely notice to a known creditor pursuant to Chapter 2 (commencing with Section 9050). A

creditor has knowledge of the administration of an estate within the meaning of subdivision (a) (1) of Section 9103 if the creditor has actual knowledge of the administration through receipt of notice given under Section 9050 or otherwise, such as information from a newspaper clipping service that comes to the attention of the creditor. Constructive knowledge through publication of a notice of death or other information that does not come to the attention of the creditor is not knowledge for the purpose of subdivision (a) (1). The standard applicable to the creditor's attorney is different. The attorney is not held responsible for any actual knowledge the attorney may have of the decedent's death unless the attorney is representing the creditor in the matter involving the decedent.

Subdivision (a) (2) is new.

It should be noted that a petition under this section must be verified. See Section 1021. This section does not apply to certain public entity claims which involve a written notice or request to the public entity and a response time governed by other law. See Sections 9201 (claims governed by special statutes) and 9202 (claim by Director of Health Services).

Probate Code § 9255 (amended). Partial allowance

Comment. Section 9255 is amended to correct a section reference.

Probate Code § 9350 (added). Application of article

Comment. Section 9350 is new. Provisions governing claims on pending actions or proceedings are located in Section 9370 (claims on pending action or proceeding), not in this article.

Probate Code § 9351 (added). Claim prerequisite to bringing action

Comment. Section 9351 restates former subdivision (c) of Section 9002 (claim requirement) with the addition of the implied requirement that the claim was rejected in whole or in part. For the time within which a claim must be filed, see Section 9100 (claim period). For late claims, see Section 9103. An action may be brought to enforce a liability of the decedent without first filing a claim in the case of a secured obligation. Section 9391 (enforcement of security interest).

This section relates only to an action against the personal representative. It does not affect actions against other persons who may be liable for the decedent's debts. See, e.g., Sections

13109 (affidavit procedure) and 13550-13554 (debts of deceased spouse). See also Sections 550-554 (liability of decedent covered by insurance).

Probate Code § 9352 (added). Tolling of statute of limitations

Comment. Section 9352 restates former subdivisions (a) and (c) of Section 9253 without substantive change.

Probate Code § 9370 (added). Claim prerequisite to continuing action

Comment. Subdivision (a) of Section 9370 restates the first sentence of former Section 709 with the addition of the implied requirement that the claim be rejected in whole or in part and that the plaintiff act to substitute the personal representative as a party within three months after rejection of the claim. The personal representative must notify creditors, including plaintiffs in actions against the decedent, if the personal representative has actual knowledge of the creditor. Section 9050 (notice required). In addition, the substitution requirement applies only if the personal representative notifies plaintiffs whose claims are rejected of the requirement. For late claims, see Section 9103.

Subdivision (b) restates the second sentence of former Section 709 without substantive change.

Probate Code § 9390 (added). Claim covered by insurance

Comment. Section 9390 replaces part of the first sentence of former Section 707, the third sentence of former Section 709, part of former Section 709.1, and subdivision (a) of former Section 721. Section 9390, in conjunction with Section 550, makes the following significant changes in the former scheme:

(1) The new provisions apply uniformly to actions pending at the death of the decedent and actions commenced after the decedent's death.

(2) Court approval is not required before the plaintiff may commence an action against the estate for the insured amount.

(3) The estate of the decedent need not otherwise qualify for treatment under Section 13100-13115 (affidavit procedure for collection or transfer of personal property).

(4) The new provisions apply in any case where there is a claim for damages for which the decedent was insured, whether for injury to or death of a person caused by the wrongful act or neglect of the decedent, or otherwise.

(5) The new provisions excuse a claim in probate only where the plaintiff is proceeding under Section 550, whether or not the insurer has otherwise accepted the defense of the cause or an appearance has been made on behalf of the decedent.

Nothing in Section 9390 affects any applicable statutes of limitation relating to the action. *Cf.* Code Civ. Proc. § 353 (death of party before expiration of limitation period); Prob. Code § 551 (statute of limitations).

Probate Code § 9391 (added). Enforcement of security interest

Comment. Section 9391 restates former Section 716, omitting the provision relating to attorney's fees.

Probate Code § 9399 (added). Transitional provision for claims in litigation

Comment. Section 9399 is an exception to the general rule of Section 3 that the new law applies on its operative date to pending probate proceedings. Where there has been litigation commenced before the operative date either against the decedent or against the personal representative, any claim requirements applicable to the litigation are governed by the relevant law in effect before the operative date and not by the new law.

Probate Code § 9605 (added). Claims against personal representative

Comment. Section 9605 restates parts of former Section 602 and extends the provisions from executors to all personal representatives. See also Section 8851 (discharge or devise of claims).

Probate Code § 10954 (added). When account is not required

Comment. Section 10954 restates former Section 933, but excludes from those whose waiver is required beneficiaries whose interest will be satisfied in full. The section also makes clear that an unpaid creditor may seek to require an account notwithstanding a waiver by beneficiaries.

In subdivision (b) (4) a reference to the trustee's written acceptance of the trust replaces the former reference to a trustee's consent to act, and a provision excusing court approval is added for court-supervised trusts. See Section 15600 (acceptance of trust by trustee). Court approval is also excused in subdivision (b) (5) for waiver by the personal representative. Subdivision (b) (6) is substituted for the former provision precluding waiver if a person entitled to distribution is unascertained. This section applies notwithstanding any other provision of this part, including but not limited to Section 10950 (court-ordered account).

Probate Code § 11000 (added). Notice of hearing

Comment. Subdivisions (a) and (b) of Section 11000 restate subdivisions (a) and (b) of former Section 926 without substantive change. Subdivisions (b) (4) and (c) are new. Subdivision (d) restates the first portion of the second sentence of former Section 926(a) without substantive change. Notice must also be given to persons who have requested special notice. See Sections 1220(e), 1250, 1252.

Probate Code § 11001 (added). Contest of account

Comment. Section 11001 restates the first and fourth sentences of former Section 927. See also Section 1043 (response or objection).

Subdivision (b) permits a contest of the value of property for purposes of distribution only, and not of the inventory and appraisal; a separate procedure is provided for a direct contest of appraisal values. See Section 8906 (objection to appraisal).

Subdivision (c) is added to make clear the right of an interested person to obtain court review of actions by the personal representative through a contest of an account.

Probate Code § 11004 (added). Expenses of personal representative

Comment. Section 11004 restates a provision formerly found in the first sentence of Section 900. It generalizes the former language that provided for allowance of expenses in the care, management, and settlement of the estate.

Probate Code § 11600 (added). Petition for distribution

Comment. Section 11600 restates without substantive change a portion of subdivision (a) of former Section 1000 (with the exception of the reference to distribution of “priorities”) and a portion of subdivision (a) of former Section 1020. For the time and manner prescribed for making a petition, see Sections 11620 (petition for preliminary distribution) and 11640 (petition for final distribution). See also Sections 12200-12206 (time for closing estate).

Probate Code § 11601 (added). Notice of hearing

Comment. With the exception of subdivision (b) (4), Section 11601 restates subdivisions (b) and (c) of former Sections 1000, 1020, and 1027.

Subdivision (b) (4) restates subdivision (d) of former Section 1027, except that the time of notice is reduced from 30 days to 15.

Probate Code § 11602 (added). Opposition to petition

Comment. Section 11602 restates without substantive change subdivision (d) of former Section 1000 and a portion of the second sentence of subdivision (a) of former Section 1020.

Probate Code § 11604 (added). Distribution to person other than beneficiary

Comment. Section 11604 restates former Section 1020.1, standardizing the manner of notice with other provisions in the code.

Probate Code § 11620 (added). Time for petition

Comment. Section 11620 restates a portion of subdivision (a) of former Section 1000. Distribution of all or a portion of the share to which a beneficiary is entitled includes a payment on account of the share. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). If distribution is made before four months have elapsed, the distributee must give a bond in the amount of the distribution. Section 11622(a) (bond). If distribution is made after four months have elapsed, the court may require the distributee to give a bond. See Section 11622(b) (bond).

Probate Code § 11640 (added). Petition and order

Comment. Subdivision (a) of Section 11640 restates portions of former Section 956 and subdivision (a) of former Sections 1020 and 1027 with the addition of a reference to the insolvency of the estate. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution).

Subdivision (b) restates a portion of former Section 1054 without substantive change. Unless there has been a waiver of accounts, the estate is not in a condition to be closed until final settlement of the accounts of the personal representative.

Subdivision (c) restates a portion of former Section 956, with the addition of a reference to the provisions governing the time for closing the estate. See Section 12201 (report of status of administration).

Probate Code § 11702 (added). Responsive pleading

Comment. Subdivision (a) of Section 11702 restates the fourth and fifth sentences of former Section 1080 without substantive change, with the clarification that the written statement may be in support of or in opposition to the petition. Subdivision (b) is new and is comparable to Section 8251 (c) (will contest).

Probate Code § 11704 (added). Hearing

Comment. Section 11704 restates without substantive change the second sentence and the first portion of the third sentence of former Section 1081, except that prior court order is not required for participation of the personal representative. The provisions of former Section 1081 for jury trial and special rules of evidence are not continued. The procedure applicable in a proceeding under this chapter is that applicable to civil actions generally. Section 1000 (general rules of practice govern).

Probate Code § 11751 (added). Receipt for distributed property

Comment. Section 11751 is new. Failure of the personal representative to record the court order for distribution of real property or the personal representative's deed does not affect title of the distributee. See also Sections 7262 (transfer or conveyance of property pursuant to court order) and 7263 (recordation of order affecting real property).

Probate Code § 11802 (added). Manner of distribution

Comment. Subdivision (a) of Section 11802 restates the first paragraph of former Section 1023 without substantive change. Subdivision (b) restates former Section 1022, substituting emancipation for marriage. Subdivision (c) is new.

Probate Code § 11854 (added). Claim of property deposited in county treasury

Comment. Section 11854 restates subdivision (a) of former Section 1064, but omits the provisions relating to property other than money deposited with the county treasurer. Personal property not ordered sold is deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

Unlike the former provision, Section 11854 provides for an ex parte order with notice to the Attorney General as the court determines, and substitutes a court order for the certificate of right.

Probate Code § 11900 (added). Distribution to State of California

Comment. Section 11900 restates the last portion of subdivision (a) of former Section 1027 without substantive change.

Probate Code § 11901 (added). Distribution in trust for a class

Comment. Section 11901 restates subdivision (e) of former Section 1027 without substantive change. The title of the state under this section is subject to the right of persons to claim the property as provided in this chapter. See Section 11903 (claims against property distributed to state).

Probate Code § 11902 (added). Disposition of property distributed to state

Comment. Section 11902 restates without substantive change subdivisions (f) and (g) of former Section 1027 and former Section 1028.

Probate Code § 11903 (added). Claims against property distributed to state

Comment. Section 11903 restates subdivisions (i) and (j) of former Section 1027 without substantive change. It should be noted that under the general claim procedures of the Code of Civil Procedure, the limitations bar may be tolled as to minors and incompetent persons in some situations. See, e.g., Code Civ. Proc. § 1441.

Probate Code § 11904 (added). No deposit in county treasury

Comment. Section 11904 restates subdivision (h) of former Section 1027 without substantive change. See also Section 7622 (general rules governing administration of estates apply to public administrator). Section 11904 is intended for the convenience of the claimant of property in only having to deal with one governmental agency. In the case of deposit of distribution of property to the state, money is delivered to the State Treasurer and personal property is delivered to the State Controller. See Section 11902 (disposition of property distributed to state).

Probate Code § 11951 (added). Petition

Comment. Section 11951 restates the first and second sentences of former Section 1101 without substantive change, except that the petition may be filed before the time to make claims has expired and may not be filed after an order for distribution has become final.

Probate Code § 12001 (added). Rate of interest

Comment. Section 12001 supersedes portions of subdivisions (a) and (c) of former Section 663. Under former Section 663, the rate of interest was that payable on a money judgment entered in this state. Section 12001 provides a fixed rate based on the minimum Series EE United States Savings Bond rate in effect one year after the decedent's death, regardless whether interest commences to accrue before, on, or after the one year anniversary. The minimum rate payable on a Series EE United States savings bond may be obtained from a financial institution or from the U.S. Savings Bond Division of the Department of Treasury (1-800-U.S.BONDS).

The rule of Section 12001 is incorporated by reference in Section 16314 (interest and income on trust distributions). For this purpose, the relevant date for fixing the interest rate is the date interest commences to run on the distribution.

The rule of Section 12001 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

Probate Code § 12002 (added). Income and expenses of specific devise

Comment. Section 12002 is new. Section 12002 applies to specific devises of real and personal property. See Section 32 (“devise” defined). The rule of Section 12002 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

Subdivision (a) codifies case law. See *Estate of McKenzie*, 199 Cal. App. 2d 393, 399-400, 18 Cal. Rptr. 680 (1962) (inheritance from another estate).

Subdivision (b) codifies case law. See, e.g., *In re Estate of Daly*, 202 Cal. 284, 287, 260 P. 296 (1927) (stock). The expenses attributable to the property under subdivision (b) are those relating directly to the property, including maintenance, insurance, property taxes, and income taxes allocable to income from the property.

The first sentence of subdivision (c) is consistent with *Estate of Reichel*, 28 Cal. App. 3d 156, 103 Cal. Rptr. 836 (1972) (where specifically devised real property produces no income but is occupied rent free by the devisee from testator’s death, expenses on the property are chargeable to the devisee). The second sentence of subdivision (c) limits the burden on the estate to the first year after the decedent’s death. Expenses paid out by the estate after the first year are ultimately borne by the distributee of the property. The equitable lien imposed by subdivision (c) is not good against a transferee of the property who gives fair consideration for the property without knowledge of the lien. See generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 168, 171 (4) (5th ed. 1941); cf. Section 15685 and the Comment thereto (trustee’s lien).

Subdivision (d) is an exception to the rule of subdivision (a).

Probate Code § 12005 (added). Interest on devise for maintenance

Comment. Section 12005 restates the portion of former Section 663(c) that related to devises for maintenance. A devise for maintenance, within the meaning of this section, includes a devise for support. The rule of Section 12005 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

Probate Code § 12201 (added). Report of status of administration

Comment. Section 12201 restates the second, third, and fourth sentences of former Section 1025.5, with the addition of an estimate of the time needed to close administration. Section 12201 also makes specific reference to the availability of an account under Section 10950; however, the court may not order an account under Section 10950 if the waiver or satisfaction provisions of Section 10954 (when account is not required) are satisfied.

Section 12201 also supersedes a portion of former Section 956 (“administration may continue for such time as may be reasonable”).

The report of status of administration must be verified. See Section 1021 (verification required).

Probate Code § 12574 (added). Transitional provision

Comment. Section 12574 makes clear that the repeal of the former publication procedure (former Sections 1043 and 1043a) and the enactment of a new affidavit procedure for the personal representative of a nondomiciliary decedent (Sections 12570 to 12573) does not impair the ability to act under the former procedure if publication was made before the operative date. Nor does publication before the operative date limit the ability of the personal representative to act under the new procedure. In this situation the personal representative may use either or both procedures.

Probate Code § 15804 (amended). Notice in case involving future interest of beneficiary

Comment. Subdivision (c) (2) of Section 15804 is amended to correct a section reference.

Probate Code § 16315 (added). Transitional provision

Comment. Section 16315 is subject to contrary provisions in the trust instrument. See Section 16302 (duty of trustee as to receipts and expenditures).

Probate Code § 21100 (repealed). Definitions

Comment. Subdivision (a) of former Section 21100 is continued in Section 39 without change. Subdivision (b) is continued in Section 45 without change. Subdivision (c) is continued in Section 81 without change.

Probate Code § 21400 (added). Abatement subject to transferor's intent

Comment. Section 21400 generalizes a number of provisions in existing statutes, and is consistent with case law. See former Sections 736, 750-752; Estate of Jenanyan, 31 Cal. 3d 703, 646 P.2d 196, 183 Cal. Rptr. 525 (1982). The text of the section is drawn from subdivision (b) of Section 3-902 of the Uniform Probate Code (1982).

The provisions of this part apply to trusts and other instruments as well as to wills. See Section 21101 (division applicable to wills, trusts, and other instruments).

Revenue & Taxation Code § 480 (amended). Change in ownership statement

Comment. Subdivision (b) of Section 480 is amended to conform terminology.

APPENDIX 5

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Creditors' Remedies

Revival of Junior Liens Where Execution Sale Set Aside

Time for Setting Sale Aside

**Enforcement of Judgment Lien on Transferred Property
After Death of Transferor-Debtor**

December 1988

**CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739**

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Creditors' Remedies*, 19 Cal. L. Revision Comm'n Reports 1251 (1988)

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

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October 24, 1988

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The Enforcement of Judgments Law was enacted on Commission recommendation in 1982. See Code Civ. Proc. §§ 680.010-724.260; *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980).

The Commission has continued to review the law relating to creditors' remedies to determine whether any substantive or technical changes are needed. As a result of this review, the Commission proposes revisions to clarify the statutes relating to actions to set aside execution sales and enforcement of liens on property transferred to another person before a judgment debtor's death.

This recommendation is submitted pursuant to Resolution Chapter 40 of the Statutes of 1983.

Respectfully submitted,

Forrest A. Plant
Chairperson

RECOMMENDATION
relating to
CREDITORS' REMEDIES

**Revival of Junior Liens
Where Execution Sale Set Aside**

When property is sold to satisfy a money judgment, generally the sale is absolute and there is no right of redemption.¹ The enforcing creditor's lien and all junior liens on the property sold are extinguished by the sale.² However, if the judgment creditor purchases the property at the sale held to satisfy its judgment, the sale may be set aside if the proceedings were improper.³ This is a limited right. An action to set the sale aside must be commenced within six months of the sale.

Existing law does not deal with the question of what happens to the junior liens that are extinguished by the sale in a case where the sale is later set aside. The Commission concludes that junior lienholders should be restored to their former positions as if the sale had not occurred. The judgment creditor, and not the junior lienholders, should suffer the consequences of the improper sale.

Time for Setting Sale Aside

The Commission also recommends that the six-month period for bringing an action to set aside the sale⁴ be shortened to 90 days. The six-month period is unnecessarily long, particularly as applied to real property sales. Because of the cloud on title resulting from the debtor's right to bring an action to set aside the sale, the creditor who purchases the property at the sale may not be able to resell the property in a timely manner and so reduce the satisfaction to cash. The statute already requires a delay of

1. See Code Civ. Proc. § 701.680.
2. Code Civ. Proc. § 701.630.
3. Code Civ. Proc. § 701.680(c).
4. Code Civ. Proc. § 701.680(c)(1).

140 days between levy and sale of real property.⁵ This period is adequate for discovery of any defects in the execution proceedings up to the time of sale. The 90-day period should be sufficient after sale. The proposed revision would not affect the debtor's remedy of suing for damages caused by the improper levy or sale.⁶

Enforcement of Judgment Lien on Transferred Property After Death of Transferor-Debtor

The Commission recommends that the Enforcement of Judgments Law be revised to clarify the procedure for enforcing a judgment lien on real property that has been transferred subject to the lien and the transferor dies after the transfer. There is a gap in the coverage of the applicable statutes in the Code of Civil Procedure and the Probate Code. The Enforcement of Judgments Law deals with enforcement of a judgment lien on property that has been transferred, but only while the debtor is still alive. After the death of the judgment debtor, enforcement of the judgment is governed by the Probate Code.⁷ The Probate Code is concerned with enforcement against property "in the estate."⁸ Property transferred subject to a lien before the debtor's death is not property in the decedent's estate. It is assumed that the creditor could bring an equitable action to foreclose the lien on the property in the hands of the transferee,⁹ although the statute is silent on the point.

The law should be clarified. The creditor should be able to use all remedies appropriate to enforcement against property under the control of a third person.¹⁰ The same rules should apply to

5. See Code Civ. Proc. §§ 701.540 (20-day notice of sale), 701.545 (120-day delay of notice of sale of real property).

6. See Code Civ. Proc. § 701.680(c)(2).

7. Code Civ. Proc. § 686.020.

8. See Prob. Code § 9300.

9. See *Hibernia Sav. & Loan Soc'y v. London & Lancashire Fire Ins. Co.*, 138 Cal. 257, 259, 71 P. 334 (1903).

10. These remedies include enforcement by writ of execution, by an equitable action to foreclose the lien, or by any other applicable procedure provided by the Enforcement of Judgments Law.

both real and personal property, although the need to enforce a lien against transferred property is most likely to arise with regard to real property.

The Enforcement of Judgments Law should be revised to provide that the Probate Code procedures apply only to property in the decedent's estate. Hence, the normally available enforcement procedures would continue to apply to property transferred subject to an enforcement lien.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 686.020, 695.070, and 701.680 of the Code of Civil Procedure, relating to creditors' remedies.

The people of the State of California do enact as follows:

Code of Civil Procedure § 686.020 (amended). Enforcement of judgment after death of judgment debtor

SECTION 1. Section 686.020 of the Code of Civil Procedure is amended to read:

686.020. After the death of the judgment debtor, enforcement of a judgment against *property in the judgment debtor's estate* is governed by the Probate Code.

Comment. Section 686.020 is amended for conformity with the scope of the Probate Code provisions relating to enforcement of judgments. See Prob. Code §§ 9300-9304, 9391. As a consequence, property transferred subject to an enforcement lien before the death of the judgment debtor may be applied to the satisfaction of a money judgment as if the judgment debtor had not died. See Section 695.070 (enforcement of lien after transfer).

Code of Civil Procedure § 695.070 (amended). Property subject to lien after transfer

SEC. 2. Section 695.070 of the Code of Civil Procedure is amended to read:

695.070. (a) Notwithstanding the transfer or encumbrance of property subject to a lien created under this division, if the property remains subject to the lien after the transfer or encumbrance, the money judgment may be enforced against the property in the same manner and to the same extent as if it had not been transferred or encumbered, *except that the judgment debtor's exemptions do not apply to the transferred property.*

(b) *If the judgment debtor dies after the transfer of property that remains subject to a lien created under this division, the money judgment may be enforced against the property as provided in subdivision (a).*

Comment. Section 695.070 is amended to clarify the manner of enforcement of a money judgment against property of a decedent in a situation where the property was transferred during the judgment debtor's lifetime subject to an enforcement lien. For provisions relating to continuation of liens after transfer, see Sections 697.390 (judgment lien on real property), 697.610 (judgment lien on personal property), 697.720-697.750 (execution lien), 697.920 (other liens).

Under subdivision (b), the judgment creditor may enforce the money judgment against the transferred property after the judgment debtor's death using any appropriate procedure available before death. Thus, the death of the judgment debtor has no effect on the judgment creditor's remedies against property that was transferred subject to an enforcement lien. The judgment creditor may use a writ of execution, any other applicable enforcement procedure provided in this division, or an action against the owner of the property to foreclose the lien. Enforcement under this section may proceed only against the property subject to the lien and only in the amount of the lien on the transferred property, as is the case when enforcing a lien on transferred property while the judgment debtor is alive. See Sections 695.210 (amount required to satisfy judgment), 697.010 (amount of lien). As to enforcement of a judgment against property in the decedent's estate, see Code Civ. Proc. § 686.020 (enforcement against property in deceased judgment debtor's estate governed by Probate Code); Prob. Code §§ 9300-9304 (enforcement of claims established by judgment).

The provision relating to the unavailability of exemptions is added at the end of subdivision (a) to avoid any implication that the judgment debtor may claim an exemption for property that has been transferred.

Code of Civil Procedure § 701.680 (amended). Sales absolute; exception

SEC. 3. Section 701.680 of the Code of Civil Procedure is amended to read:

701.680. (a) Except as provided in paragraph (1) of subdivision (c), a sale of property pursuant to this article is absolute and may not be set aside for any reason.

(b) If the judgment is reversed, vacated, or otherwise set aside, the judgment debtor may recover from the judgment creditor the proceeds of a sale pursuant to the judgment with interest at the rate on money judgments to the extent the proceeds were applied to the satisfaction of the judgment.

(c) If the sale was improper because of irregularities in the proceedings, because the property sold was not subject to execution, or for any other reason:

(1) The judgment debtor, or the judgment debtor's successor in interest, may commence an action within ~~six months~~ *90 days* after the date of sale to set aside the sale if the purchaser at the sale is the judgment creditor. Subject to paragraph (2), if the sale is set aside, the judgment of the judgment creditor is revived to reflect the amount that was satisfied from the proceeds of the sale and the judgment creditor is entitled to interest on the amount of the judgment as so revived as if the sale had not been made. *Any liens extinguished by the sale of the property are revived and reattach to the property with the same priority and effect as if the sale had not been made.*

(2) The judgment debtor, or the judgment debtor's successor in interest, may recover damages caused by the impropriety. If damages are recovered against the judgment creditor, they shall be offset against the judgment to the extent the judgment is not satisfied. If damages are recovered against the levying officer, they shall be applied to the judgment to the extent the judgment is not satisfied.

(d) For the purposes of subdivision (c), the purchaser of the property at the sale is not a successor in interest.

Comment. Subdivision (c)(1) of Section 701.680 is revised to provide for the reattachment of liens on property sold at an execution sale that is later held to be improper. In this case, the liens that were extinguished by operation of Section 701.630, including the lien of the judgment creditor sought to be satisfied by the sale, are revived and reattach to the property as if the execution sale had not taken place. Other things being equal, revived liens attach in the amounts and with the priority that they would have had if not extinguished by the sale under the superior lien of the judgment creditor.

Subdivision (c) (1) is also amended to shorten the time for bringing an action to set aside the sale from six months to 90 days.

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VOLUME 1 (1957)

[Out of Print]

1955 Annual Report [out of print]

1956 Annual Report [out of print]

1957 Annual Report [out of print]

Recommendation and Study Relating to:

The Maximum Period of Confinement in a County Jail [out of print]

Notice of Application for Attorney's Fees and Costs in Domestic Relations

Actions [out of print]

Taking Instructions to the Jury Room [out of print]

The Dead Man Statute [out of print]

Rights of Surviving Spouse in Property Acquired by Decedent While

Domiciled Elsewhere [out of print]

The Marital "For and Against" Testimonial Privilege [out of print]
 Suspension of the Absolute Power of Alienation [out of print]
 Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378
 Judicial Notice of the Law of Foreign Countries [out of print]
 Choice of Law Governing Survival of Actions [out of print]
 The Effective Date of an Order Ruling on a Motion for New Trial [out of print]
 Retention of Venue for Convenience of Witnesses [out of print]
 Bringing New Parties into Civil Actions [out of print]

VOLUME 2 (1959)

[Out of Print]

1958 Annual Report

1959 Annual Report

Recommendation and Study Relating to:

The Presentation of Claims Against Public Entities
 The Right of Nonresident Aliens to Inherit
 Mortgages to Secure Future Advances
 The Doctrine of Worthier Title
 Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of
 Vehicles and Drunk Driving
 Time Within Which Motion for New Trial May Be Made
 Notice to Shareholders of Sale of Corporate Assets

VOLUME 3 (1961)

[Out of Print]

1960 Annual Report [out of print]

1961 Annual Report [out of print]

Recommendation and Study Relating to:

Evidence in Eminent Domain Proceedings
 Taking Possession and Passage of Title in Eminent Domain Proceedings [out of
 print]
 The Reimbursement for Moving Expenses When Property is Acquired for Public
 Use [out of print]
 Rescission of Contracts [out of print]
 The Right to Counsel and the Separation of the Delinquent From the
 Nondelinquent Minor in Juvenile Court Proceedings [out of print]
 Survival of Actions [out of print]
 Arbitration [out of print]
 The Presentation of Claims Against Public Officers and Employees [out of print]
 Inter Vivos Marital Property Rights in Property Acquired While Domiciled
 Elsewhere [out of print]
 Notice of Alibi in Criminal Actions

VOLUME 4 (1963)

1962 Annual Report

1963 Annual Report

1964 Annual Report

Recommendation and Study Relating to Condemnation Law and Procedure:

Number 4 — **Discovery in Eminent Domain Proceedings** [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.]

Recommendations Relating to Sovereign Immunity:

Number 1 — **Tort Liability of Public Entities and Public Employees**

Number 2 — **Claims, Actions and Judgments Against Public Entities and Public Employees**

Number 3 — **Insurance Coverage for Public Entities and Public Employees**

Number 4 — **Defense of Public Employees**

Number 5 — **Liability of Public Entities for Ownership and Operation of Motor Vehicles**

Number 6 — **Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers**

Number 7 — **Amendments and Repeals of Inconsistent Special Statutes** [out of print]

Tentative Recommendation and A Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence) [out of print]**VOLUME 5 (1963)**

[Out of Print]

A Study Relating to Sovereign Immunity [Note: The price of this softcover publication is \$10.00.]

VOLUME 6 (1964)

[Out of Print]

Tentative Recommendations and Studies Relating to the Uniform Rules of Evidence:

Article I (General Provisions)

Article II (Judicial Notice)

Burden of Producing Evidence, Burden of Proof, and Presumptions (replacing URE Article III)

Article IV (Witnesses)

Article V (Privileges) [out of print]

Article VI (Extrinsic Policies Affecting Admissibility)

Article VII (Expert and Other Opinion Testimony)

Article VIII (Hearsay Evidence) [same as publication in Volume 4] [out of print]

Article IX (Authentication and Content of Writings)

VOLUME 7 (1965)

1965 Annual Report [out of print]

1966 Annual Report [out of print]

Evidence Code with Official Comments [out of print]

Recommendation Proposing an Evidence Code [out of print]

Recommendation Relating to Sovereign Immunity: Number 8 — Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees [out of print]

VOLUME 8 (1967)

Annual Report (December 1966) includes the following recommendation:

Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes the following recommendations:

Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding

Improvements Made in Good Faith Upon Land Owned by Another

Damages for Personal Injuries to a Married Person as Separate or Community Property

Service of Process on Unincorporated Associations

Recommendation and Study Relating to:

Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property

Vehicle Code Section 17150 and Related Sections

Additur

Abandonment or Termination of a Lease

The Good Faith Improver of Land Owned by Another

Suit By or Against An Unincorporated Association

Recommendation Relating to The Evidence Code:

Number 1 — Evidence Code Revisions

Number 2 — Agricultural Code Revisions [out of print]

Number 3 — Commercial Code Revisions

Recommendation Relating to Escheat

Tentative Recommendation and A Study Relating to Condemnation Law and

Procedure: Number 1 — Possession Prior to Final Judgment and Related Problems

VOLUME 9 (1969)

[Out of Print]

Annual Report (December 1968) includes the following recommendations:

Sovereign Immunity: Number 9 — Statute of Limitations in Actions Against Public Entities and Public Employees

Additur and Remittitur

Fictitious Business Names

Annual Report (December 1969) includes the following recommendations: [out of print]

Quasi-Community Property

Arbitration of Just Compensation

The Evidence Code: Number 5 — Revisions of the Evidence Code

Real Property Leases

Statute of Limitations in Actions Against Public Entities and Public Employees

Recommendation and Study Relating to:

Mutuality of Remedies in Suits for Specific Performance

Powers of Appointment [out of print]

Fictitious Business Names

Representations as to the Credit of Third Persons and the Statute of Frauds

The "Vesting" of Interests Under the Rule Against Perpetuities

Recommendation Relating to:**Real Property Leases****The Evidence Code: Number 4 — Revision of the Privileges Article****Sovereign Immunity: Number 10 — Revisions of the Governmental Liability Act****VOLUME 10 (1971)****Annual Report (December 1970) includes the following recommendation: [out of print]****Inverse Condemnation: Insurance Coverage****Annual Report (December 1971) includes the following recommendation: [out of print]****Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment****California Inverse Condemnation Law [out of print]****Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions****Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law [out of print]****VOLUME 11 (1973)****Annual Report (December 1972)****Annual Report (December 1973) includes the following recommendations:****Evidence Code Section 999 - The "Criminal Conduct" Exception to the Physician-Patient Privilege****Erroneously Ordered Disclosure of Privileged Information****Recommendation and Study Relating to:****Civil Arrest****Inheritance Rights of Nonresident Aliens****Liquidated Damages****Recommendation Relating to:****Wage Garnishment and Related Matters****The Claim and Delivery Statute****Unclaimed Property****Enforcement of Sister State Money Judgments****Prejudgment Attachment****Landlord-Tenant Relations****Tentative Recommendation Relating to Prejudgment Attachment [out of print]****VOLUME 12 (1974)****Annual Report (December 1974) includes the following recommendations:****Payment of Judgments Against Local Public Entities****View by Trier of Fact in a Civil Case****The Good Cause Exception to the Physician-Patient Privilege****Escheat of Amounts Payable on Travelers Checks, Money Orders and Similar Instruments****Recommendation Proposing the Eminent Domain Law [out of print]****Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts****Recommendation Relating to Wage Garnishment Exemptions**

Tentative Recommendations Relating to Condemnation Law and Procedure:

- The Eminent Domain Law
- Condemnation Authority of State Agencies
- Conforming Changes in Special District Statutes

VOLUME 13 (1976)**Annual Report (December 1975) includes the following recommendations:**

- Admissibility of Copies of Business Records in Evidence
- Turnover Orders Under the Claim and Delivery Law
- Relocation Assistance by Private Condemnors
- Condemnation for Byroads and Utility Easements
- Transfer of Out-of-State Trusts to California
- Admissibility of Duplicates in Evidence
- Oral Modification of Contracts
- Liquidated Damages

Annual Report (December 1976) includes the following recommendations:

- Service of Process on Unincorporated Associations
- Sister State Money Judgments
- Damages in Action for Breach of Lease
- Wage Garnishment
- Liquidated Damages

Selected Legislation Relating to Creditors' Remedies [out of print]**Eminent Domain Law with Conforming Changes in Codified Sections and Official Comments****Recommendation and Study Relating to Oral Modification of Written Contracts****Recommendation Relating to:**

- Partition of Real and Personal Property
- Wage Garnishment Procedure
- Revision of the Attachment Law
- Undertakings for Costs
- Nonprofit Corporation Law [out of print]

VOLUME 14 (1978)**Annual Report (December 1977) includes the following recommendations:**

- Use of Keepers Pursuant to Writs of Execution
- Attachment Law: Effect of Bankruptcy Proceedings; Effect of General Assignments for Benefit of Creditors
- Review of Resolution of Necessity by Writ of Mandate
- Use of Court Commissioners Under the Attachment Law
- Evidence of Market Value of Property
- Psychotherapist-Patient Privilege
- Parol Evidence Rule

Annual Report (December 1978) includes the following recommendations:

- Technical Revisions in the Attachment Law: Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action"
- Ad Valorem Property Taxes in Eminent Domain Proceedings
- Security for Costs

Recommendation Relating to Guardianship-Conservatorship Law

VOLUME 15 (1980)**Part I**

Annual Report (December 1979) includes the following recommendations:

Effect of New Bankruptcy Law on the Attachment Law

Confessions of Judgment

Special Assessment Liens on Property Taken for Public Use

Assignments for the Benefit of Creditors

Vacation of Public Streets, Highways, and Service Easements

Quiet Title Actions

Agreements for Entry of Paternity and Support Judgments

Enforcement of Claims and Judgments Against Public Entities

Uniform Veterans Guardianship Act

Psychotherapist-Patient Privilege

Enforcement of Obligations After Death

Guardianship-Conservatorship Law with Official Comments

Recommendation Relating to:

Enforcement of Judgments: Interest Rate on Judgments; Married Women as Sole Traders; State Tax Liens

Application of Evidence Code Property Valuation Rules in Noncondemnation Cases

Uniform Durable Power of Attorney Act

Probate Homestead

Part II

[Out of Print]

Annual Report (December 1980) includes the following recommendation:

Revision of the Guardianship-Conservatorship Law: Appointment of Successor Guardian or Conservator; Support of Conservatee Spouse from Community Property; Appealable Orders

Recommendations Relating to Probate and Estate Planning:

Non-Probate Transfers; Revision of the Powers of Appointment Statute

Tentative Recommendation Proposing the Enforcement of Judgments Law

VOLUME 16 (1982)

[Out of Print]

Annual Report (December 1981) includes the following recommendation:

Federal Military and Other Federal Pensions as Community Property

Annual Report (December 1982) includes the following recommendations:

Division of Joint Tenancy and Tenancy in Common Property at Dissolution of Marriage

Creditors' Remedies: Amount Secured by Attachment; Execution of Writs by Registered Process Servers; Technical Amendments

Dismissal for Lack of Prosecution

Conforming Changes to the Bond and Undertaking Law

Notice of Rejection of Late Claim Against Public Entity

Recommendation Relating to:

Holographic and Nuncupative Wills

Marketable Title of Real Property

Statutory Bonds and Undertakings

Attachment

Probate Law and Procedure: Missing Persons; Nonprobate Transfers;

Emancipated Minors; Notice in Limited Conservatorship Proceedings;

Disclaimer of Testamentary and Other Interests

1982 Creditors' Remedies Legislation [out of print]

Tentative Recommendation Relating to Wills and Intestate Succession

VOLUME 17 (1984)

Annual Report (December 1983) includes the following recommendations:

Effect of Death of Support Obligor

Dismissal for Lack of Prosecution

Severance of Joint Tenancy

Effect of Quiet Title and Partition Judgments

Dormant Mineral Rights

Creditors' Remedies: Levy on Joint Deposit Accounts; Issuance of Earnings

Withholding Orders by Registered Process Servers; Protection of Declared

Homestead After Owner's Death; Jurisdiction of Condominium Assessment

Lien Enforcement; Technical Amendments

Rights Among Cotenants in Possession and Out of Possession of Real Property

Recommendation Relating to:

Liability of Marital Property for Debts

Durable Power of Attorney for Health Care Decisions

Statutory Forms For Durable Powers of Attorney [out of print]

Family Law: Marital Property Presumptions and Transmutations; Disposition of

Community Property; Reimbursement of Educational Expenses; Special

Appearance in Family Law Proceedings; Liability of Stepparent for Child

Support; Awarding Temporary Use of Family Home

Probate Law: Independent Administration of Decedent's Estates; Distribution of

Estates Without Administration; Execution of Witnessed Wills; Simultaneous

Deaths; Notice of Will; Garnishment of Amounts Payable to Trust

Beneficiary; Bonds for Personal Representatives; Revision of Wills and

Intestate Succession Law; Recording Affidavit of Death

Statutes of Limitation for Felonies

Uniform Transfers to Minors Act

VOLUME 18 (1986)

Annual Report (March 1985) includes the following recommendations:

Provision for Support if Support Obligor Dies

Transfer Without Probate of Certain Property Registered by the State

Dividing Jointly Owned Property Upon Marriage Dissolution

Annual Report (December 1985) includes the following recommendations:

Protection of Mediation Communications

Recording Severance of Joint Tenancy

Abandoned Easements

Distribution Under a Will or Trust

Effect of Adoption or Out of Wedlock Birth on Rights at Death

Durable Powers of Attorney

Litigation Expenses in Family Law Proceedings
 Civil Code Sections 4800.1 and 4800.2
 Annual Report (December 1986) includes the following recommendations:
 Notice in Guardianship and Conservatorship Proceedings
 Preliminary Provisions and Definitions of the Probate Code
 Technical Revisions in the Trust Law
 Recommendation Proposing the Trust Law
 Recommendations Relating to Probate Law: Disposition of Estates Without
 Administration; Small Estate Set-Aside; Proration of Estate Taxes
 Selected 1986 Trust and Probate Legislation With Official Comments [out of print]

VOLUME 19 (1988)

[Volume expected to be available in September 1989]

Recommendations Relating to Probate Law: Supervised Administration of Decedent's
 Estate; Independent Administration of Estates Act; Creditor Claims Against
 Decedent's Estate; Notice in Probate Proceedings
 Annual Report (December 1987) includes the following recommendations:
 Marital Deduction Gifts
 Estates of Missing Persons
 The Uniform Dormant Mineral Interests Act
 Recommendations Relating to Probate Law: Public Guardians and Administrators;
 Inventory and Appraisal; Opening Estate Administration; Abatement; Accounts;
 Litigation Involving Decedents; Rules of Procedure in Probate; Distribution and
 Discharge; Nondomiciliary Decedents; Interest and Income During
 Administration
 Annual Report (December 1988) includes the following recommendation:
 Creditors' Remedies: Revival of Junior Liens Where Execution Sale Set Aside;
 Time for Setting Sale Aside; Enforcement of Judgment Lien on Transferred
 Property After Death of Transferor-Debtor

