



TRUSTS & ESTATES SECTION

THE STATE BAR OF CALIFORNIA

COLLECTION OF PERSONAL PROPERTY OF ESTATE BY SISTER STATE PERSONAL REPRESENTATIVE WITHOUT ANCILLARY ADMINISTRATION

LEGISLATIVE PROPOSAL (T&E-2009-08)

TO: Saul Bercovitch, Legislative Counsel

FROM: Peter Stern, Chair, Trusts and Estates Section Executive Committee
Richard Burger, Chair, Trusts and Estates Section Administration Subcommittee

DATE: May 20, 2008

RE: Collection of Personal Property of Estate by Sister State Personal Representative
without Ancillary Administration

SECTION ACTION AND CONTACT(S):

Date of Approval by Section Executive Committee: 5/4/2008
Approval vote: For: 22 Against: 1 Abstain: 1
Date of Approval by Section Committee/Subcommittee: 1/7/2008
Approval vote: Unanimous

Contact Information	Section Legislative Co-Chairs
Margaret M. Hand Law Offices of Margaret M. Hand, PC 1939 Harrison Street, Suite 200 Oakland, CA 94612 Phone: (510) 444-6044 Fax: (510) 444-7044 Margaret@handlaw.com	Silvio Reggiardo III Downey Brand et al LLP 555 Capitol Mall 10th Floor Sacramento, CA 95814 Phone: (916) 441-0131 Fax: (916) 441-4021 sreggiardo@DowneyBrand.com
Kay Henden 150 California Street, 12th Floor San Francisco, CA 94111 Phone: (415) 576-2836 Fax: (415) 576-3971 Kay.Henden@CNB.com	Edward J. Corey, Jr. Weintraub Genshlea Chediak 400 Capitol Mall, 11th Floor Sacramento, CA 95814 Phone: (916) 558-6017 Fax: (916) 446-1611 ecorey@weintraub.com

DIGEST: This proposal would allow a sister-state Personal Representative (an individual or institution appointed to manage someone’s affairs; examples would be an executor, an administrator, etc) to collect any amount of personal property (anything other than real estate) belonging to a decedent and located in California. Currently, a simplified affidavit procedure accomplishes this for property under \$100,000, but over that amount a full formal court procedure is needed.

Under this proposal, once 40 days had passed since the decedent’s death, the sister-state Personal Representative could present an affidavit to the holder of the decedent’s property, asserting the sister-state Personal Representative’s right to collect the property. The affidavit would include a certified copy of the decedent’s death certificate and a certified copy of Letters Testamentary.

The holder of the property would be required to transfer the property to the sister-state Personal Representative, and would be protected for relying on the affidavit. The property obtained by the sister-state Personal Representative would be subject to the claims of the decedent’s creditors under the probate proceeding in the decedent’s domicile.

PURPOSE: This proposal is designed to simplify and reduce the cost of at-death administration of personal property (such as bank accounts, brokerage accounts, etc.) located in California when the individual owning the property died a resident of another state. If a person dies a resident of another state, a probate proceeding is commenced in that state and a Personal Representative is appointed to administer the decedent’s affairs. If a person dies owning personal property that is located in California and which exceeds \$100,000 in value, a Personal Representative appointed in the decedent’s state of residence must initiate a second formal probate proceeding in this state.

1). What is the state of existing law (statutory and/or case law) on the issue?

Under present law (*see* Estate of Glassford (1952) 114 Cal.App.2d 181), a sister-state Personal Representative is required to file for ancillary probate in order to collect personal property in California, unless the property can be transferred by affidavit under Probate Code §§ 13100 et seq.. This “small estate affidavit” cannot be used if the value of the property exceeds the statutory limit (currently \$100,000).

2). What is the problem with the existing law?

If personal property is located in California but the decedent died elsewhere, a sister-state Personal Representative is required to maintain two separate court proceedings to administer the property, one in the domiciliary state, the other in California. These proceedings are costly, time-consuming, and can unnecessarily delay distribution of the estate. This represents a needless and significant burden on the estate and its beneficiaries.

For example, suppose an individual living in Idaho dies in that state, leaving total property valued at \$1,000,000 in Idaho and a bank account in California valued at \$150,000. The Personal Representative of that individual’s estate would be required to open and manage two completely separate actions to transfer the decedent’s property to his heirs, one each in California and Idaho.

3). How does this proposal remedy the problem?

This proposal permits the sister-state Personal Representative to collect the California personal property by means of a simple affidavit, thereby consolidating the decedent's property in the sister state for efficient administration. The proposal is modeled on Probate Code §§ 13100 et seq.

4). Management by other jurisdictions.

A review of other jurisdictions indicates that 16 states have adopted the Uniform Probate Code, which permits this type of transfer 60 days after decedent's date of death; an additional 5 states have statutory provisions allowing a similar simplified transfer procedure.

SIMILAR LEGISLATION: No prior legislation has addressed this issue.

PENDING LITIGATION: No pending litigation would be impacted by this legislation if enacted.

LIKELY SUPPORT & OPPOSITION:

<u>Support</u>	<u>Why?</u>
Banks and trust companies; trust and estate attorneys	Process would simplify administration and clarify legal requirements for transfer of personal property out of state
<u>Oppose</u>	
None known	

FISCAL IMPACT: No public funds will be required to implement this legislation.

GERMANENESS:

This matter requires the special knowledge, training, experience or technical expertise of the Trusts and Estates Section because it relates to resolution of trust, probate and estate matters which are the special purview of the Section.

TEXT OF PROPOSAL:

See attached.

TEXT OF PROPOSAL

SECTION 1. Sections 12580 through 12589.1 are added to the Probate Code, to read:

12580. Affidavit Procedure for Larger Estates

If the value of a nondomiciliary decedent's property in this state exceeds the dollar amount specified in Section 13100, and if 40 days have elapsed since the death of the decedent, a sister state personal representative may, without petitioning for ancillary administration, use the procedure described in Chapter 3, commencing with Section 12581 of Part 13 of Division 7 to collect personal property of the decedent.

12581. Affidavit or Declaration Required

(a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

- (1) The decedent's name.
- (2) The date and place of the decedent's death.
- (3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."
- (4) "No proceeding (including an application or petition for same) is now being or has been conducted in California for administration of the decedent's estate."
- (5) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.
- (6) "The affiant or declarant is the duly-appointed Personal Representative of said decedent in the state where said decedent was domiciled."
- (7) "No other person has a superior right to the interest of the decedent in the described property."
- (8) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."
- (9) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one personal representative executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5 (relating to Recordation of Affidavit Where Lien Has Been Recorded).

(d) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

(e) A certified copy of the affiant's Letters Testamentary, Letters of Administration, or the equivalent document in the state where the decedent was domiciled shall be attached to the

affidavit or declaration. Said certified copy shall be certified within 60 days of the presentation to the holder of the property.

12582. Attaching Evidence of Ownership to Affidavit

Probate Code Section 13102, relating to presentation of evidence of ownership to the holder of property prior to collection under this part, shall be applicable to collection of personal property under Section 12580 et seq.

12583. Transfer

(a) If the requirements of Sections 12580 to 12582, inclusive, are satisfied:

(1) The sister state personal representative is entitled to have the property described in the affidavit or declaration paid, delivered, or transferred to it.

(2) A transfer agent of a security described in the affidavit or declaration shall change the registered ownership on the books of the corporation from the decedent to the sister state personal representative.

(b) If the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof to the sister state personal representative within a reasonable time, the sister state personal representative may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property. If an action is brought against the holder under this section, the court shall award reasonable attorney's fees to the person or persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them as required by subdivision (a).

12584. Acquittance

(a) If the requirements of Sections 12580 to 12582, inclusive, are satisfied, receipt by the holder of the decedent's property of the affidavit or declaration constitutes sufficient acquittance for the payment of money, delivery of property, or changing registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder may rely in good faith on the statements in the affidavit or declaration and has no duty to inquire into the truth of any statement in the affidavit or declaration.

(b) If the requirements of Sections 12580 to 12582, inclusive, are satisfied, the holder of the decedent's property is not liable for any taxes due to this state by reason of paying money, delivering property, or changing registered ownership of property pursuant to this chapter.

12585. Where Property Claimed in Affidavit is Subject of Pending Action In Which Decedent Was a Party

Where the money or property claimed in an affidavit or declaration executed under this chapter is the subject of a pending action or proceeding in which the decedent was a party, the sister state personal representative of the decedent shall, without procuring letters of administration or awaiting probate of the will, be substituted as a party in place of the decedent by making a motion under Article 3 (commencing with Section 377.30) of Chapter 4 of Title 2 of Part 2 of the Code of Civil Procedure. The sister state personal representative shall file the

affidavit or declaration with the court when the motion is made. For the purpose of Article 3 (commencing with Section 377.30) of Chapter 4 of Title 2 of Part 2 of the Code of Civil Procedure, a sister state personal representative of the decedent who complies with this chapter shall be considered as a successor in interest of the decedent.

12586. Requirements for Use of Affidavit Procedure

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

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

12586.1 Restoration to Estate

(a) Subject to the provisions of this section, if proceedings for the administration of the decedent's estate are commenced in this state, and the personal representative later requests that the property be restored to the estate, the sister state personal representative to whom payment, delivery, or transfer of the decedent's property is made under this chapter is liable for:

(1) The restitution of the property to the estate if the sister state personal representative still has the property, together with (A) the net income the sister state personal representative received from the property and (B) if the sister state personal representative encumbered the property after it was delivered or transferred to the sister state personal representative, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.

(2) The restitution to the estate of the fair market value of the property if the sister state personal representative no longer has the property, together with (A) the net income the sister state personal representative received from the property and (B) interest on the fair market value of the property from the date of disposition at the rate payable on a money judgment. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, determined as of the time of the disposition of the property, of the property paid, delivered, or transferred to the sister state personal representative under this chapter, less any liens and encumbrances on the property at that time.

(b) If any person fraudulently secures the payment, delivery, or transfer of the decedent's property under this chapter, such person is liable under this section for restitution to the decedent's estate of three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, determined as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter, of the property paid, delivered, or transferred to such person under this chapter, less the amount of any liens and encumbrances on the property at that time.

(c) The property and amount required to be restored to the estate under this section shall be reduced by any property or amount: (1) paid by the sister state personal representative to satisfy unsecured debts of decedent as provided in 12587 or (2) administrative expenses paid or distributions made in good faith and pursuant to the law of the sister state.

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court's judgment may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

(e) An action to enforce the liability under this section is forever barred three years after presentation of the affidavit or declaration under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(f) In the case of a nondomiciliary decedent, restitution under this section shall be made to the estate in an ancillary administration proceeding.

12587. Liability of Sister State Personal Representative to Whom Payment, Delivery or Transfer of Decedent's Property is Made

A sister state personal representative to whom payment, delivery, or transfer of the decedent's property is made under this chapter is liable, to the extent provided in Section 12590, for the unsecured debts of the decedent. Any such debt may be enforced against the sister state personal representative in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the sister state personal representative may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies in an action under this section.

12588. Costs and Fees of Public Administrator or Coroner

(a) A public administrator who has taken possession or control of property of a decedent under Article 1 (commencing with Section 7600) of Chapter 4 of Part 1 of Division 7 may refuse to pay money or deliver property pursuant to this chapter if payment of the costs and fees described in Section 7604 has not first been made or adequately assured to the satisfaction of the public administrator.

(b) A coroner who has property found upon the body of a decedent, or who has taken charge of property of the decedent pursuant to Section 27491.3 of the Government Code, may refuse to pay or deliver the property pursuant to this chapter if payment of the reasonable costs of holding or safeguarding the property has not first been made or adequately assured to the satisfaction of the coroner.

12589. Chapter Not Applicable to Real Property

The procedure provided in this chapter may not be used to obtain possession or the transfer of real property.

12589.1. Scope of Chapter

The procedure provided in this chapter is in addition to and supplemental to any other procedure for (1) collecting money due to a decedent, (2) receiving tangible personal property of a decedent, or (3) having evidence of ownership of property of a decedent transferred. Nothing in this chapter restricts or limits the release of tangible personal property of a decedent pursuant to any other provision of law.

Section below given for reference only

12590. Jurisdiction over Sister State Personal Representative. [No change]

A sister state personal representative or foreign nation personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by any of the following actions:

- (a) Filing a petition for ancillary administration.
- (b) Receiving money or other personal property pursuant to Chapter 3 (commencing with Section 12570). Jurisdiction under this subdivision is limited to the amount of money and the value of personal property received.
- (c) Doing any act in this state as a personal representative that would have given this state jurisdiction over the personal representative as an individual.