

## Assembly Bill No. 873

### CHAPTER 417

An act to amend Sections 2024 and 2040 of the Family Code, to amend Sections 1300, 1301, 1303, 5003, 5302, and 21111 of, to add Section 856.5 to, to add Part 4 (commencing with Section 5600) to Division 5 of, and to repeal Section 6202 of, the Probate Code, relating to nonprobate transfers.

[Approved by Governor October 1, 2001. Filed with Secretary of State October 2, 2001.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 873, Harman. Nonprobate transfers: former spouses.

Existing law provides for the transfer of property upon death by various means, including wills, trusts, joint tenancies, insurance policies, and retirement death benefits, among others. Existing law permits a trustee with a power of appointment to distribute property to beneficiaries according to the terms of the trust. Existing law permits the structuring of certain financial accounts so that they will be payable to one person upon the death of another. Existing law permits vehicles to be owned in joint tenancy and, upon death of one of the parties, that ownership may pass to another joint tenant. Existing law provides that dissolution of a marriage revokes a bequest of property made in a will to a former spouse, and revokes a beneficiary designation to a former spouse under the Public Employees' Retirement System, as specified. Existing law provides that dissolution of marriage prohibits a former spouse from receiving the spouse's share under intestate succession.

This bill would provide that specified property transfers to a transferor's spouse upon death would fail if, at the time of death, that person is no longer the transferor's surviving spouse, due to annulment or dissolution of marriage, except where the transfer is not subject to revocation at time of death, or where there is clear and convincing evidence that the transferor intended to preserve the transfer to the former spouse. This bill would except provisions in life insurance policies from the definition of specified property transfers subject to the provisions described above. The bill would provide that a joint tenancy created between a decedent and the decedent's former spouse is severed if it was created before or during marriage and, at the time of death, the former spouse is not the decedent's surviving spouse, due to annulment or dissolution of marriage, except as specified.

The bill would also provide for the property rights of a person who subsequently purchases or encumbrances property in good faith, and would provide that a specified affidavit or declaration in this regard may be recorded. By increasing the duties of local officials processing these documents, this bill would create a state-mandated local program.

The bill would additionally provide that holders of certain property may transfer the property in accordance with provisions of specified instruments despite possible inconsistencies with the rights of a person named as a beneficiary, except as specified. The bill would permit a court to award damages and fees when a notice of a person claiming an interest in certain property is determined to have been filed in bad faith. The bill would delete the definition of spouse from the California Statutory Will. The bill would also make related and conforming changes. The bill would be operative on January 1, 2002, but would provide that specified provisions do not apply if the decedent making the nonprobate transfer or creating the joint tenancy dies, or if the dissolution of a marriage terminating the status of a beneficiary occurs, before that date.

Chapter 49 of the Statutes of 2001, operative January 1, 2002, revised, recast, and consolidated provisions regarding the determination of claims brought to determine ownership of real or personal property claimed by an estate, a ward or conservatee, or a trustee, as specified.

This bill would require a court, acting under those provisions, to deny a petition, if the court determines that the matter should be determined by a civil action. This bill would also make related technical changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

SECTION 1. Section 2024 of the Family Code is amended to read: 2024. (a) A petition for dissolution of marriage, nullity of marriage, or legal separation of the parties, or a joint petition for summary dissolution of marriage, shall contain the following notice:

“Dissolution or annulment of your marriage may automatically cancel your spouse’s rights under your will, trust, retirement benefit



plan, power of attorney, pay on death bank account, transfer on death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your spouse's rights as beneficiary of your life insurance policy. If these are not the results that you want, you must change your will, trust, account agreement, or other similar document to reflect your actual wishes.

Dissolution or annulment of your marriage may also automatically cancel your rights under your spouse's will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, and survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your rights as beneficiary of your spouse's life insurance policy.

You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement benefit plans, and credit reports to determine whether they should be changed or whether you should take any other actions in view of the dissolution or annulment of your marriage, or your legal separation. However, some changes may require the agreement of your spouse or a court order (see Part 3 (commencing with Section 231) of Division 2 of the Family Code)."

(b) A judgment for dissolution of marriage, for nullity of marriage, or for legal separation of the parties shall contain the following notice:

"Dissolution or annulment of your marriage may automatically cancel your spouse's rights under your will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your spouse's rights as beneficiary of your life insurance policy. If these are not the results that you want, you must change your will, trust, account agreement, or other similar document to reflect your actual wishes.

Dissolution or annulment of your marriage may also automatically cancel your rights under your spouse's will, trust, retirement benefit plan, power of attorney, pay on death bank account, transfer on death vehicle registration, survivorship rights to any property owned in joint tenancy, and any other similar thing. It does not automatically cancel your rights as beneficiary of your spouse's life insurance policy.

You should review these matters, as well as any credit cards, other credit accounts, insurance policies, retirement benefit plans, and credit reports to determine whether they should be changed or whether you should take any other actions in view of the dissolution or annulment of



your marriage, or your legal separation.”

SEC. 2. Section 2040 of the Family Code is amended to read:

2040. (a) In addition to the contents required by Section 412.20 of the Code of Civil Procedure, the summons shall contain a temporary restraining order:

(1) Restraining both parties from removing the minor child or children of the parties, if any, from the state without the prior written consent of the other party or an order of the court.

(2) Restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal, whether community, quasi-community, or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for the necessities of life, and requiring each party to notify the other party of any proposed extraordinary expenditures at least five business days before incurring those expenditures and to account to the court for all extraordinary expenditures made after service of the summons on that party.

Notwithstanding the foregoing, nothing in the restraining order shall preclude a party from using community property, quasi-community property, or the party's own separate property to pay reasonable attorney's fees and costs in order to retain legal counsel in the proceeding. A party who uses community property or quasi-community property to pay his or her attorney's retainer for fees and costs under this provision shall account to the community for the use of the property. A party who uses other property that is subsequently determined to be the separate property of the other party to pay his or her attorney's retainer for fees and costs under this provision shall account to the other party for the use of the property.

(3) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability, held for the benefit of the parties and their child or children for whom support may be ordered.

(4) Restraining both parties from creating a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the disposition of property subject to the transfer, without the written consent of the other party or an order of the court.

(b) Nothing in this section restrains any of the following:

(1) Creation, modification, or revocation of a will.

(2) Revocation of a nonprobate transfer, including a revocable trust, pursuant to the instrument, provided that notice of the change is filed and served on the other party before the change takes effect.



(3) Elimination of a right of survivorship to property, provided that notice of the change is filed and served on the other party before the change takes effect.

(4) Creation of an unfunded revocable or irrevocable trust.

(5) Execution and filing of a disclaimer pursuant to Part 8 (commencing with Section 260) of Division 2 of the Probate Code.

(c) In all actions filed on and after January 1, 1995, the summons shall contain the following notice:

“WARNING: California law provides that, for purposes of division of property upon dissolution of marriage or legal separation, property acquired by the parties during marriage in joint form is presumed to be community property. If either party to this action should die before the jointly held community property is divided, the language of how title is held in the deed (i.e., joint tenancy, tenants in common, or community property) will be controlling and not the community property presumption. You should consult your attorney if you want the community property presumption to be written into the recorded title to the property.”

(d) For the purposes of this section:

(1) “Nonprobate transfer” means an instrument, other than a will, that makes a transfer of property on death, including a revocable trust, pay on death account in a financial institution, Totten trust, transfer on death registration of personal property, or other instrument of a type described in Section 5000 of the Probate Code.

(2) “Nonprobate transfer” does not include a provision for the transfer of property on death in an insurance policy or other coverage held for the benefit of the parties and their child or children for whom support may be ordered, to the extent that the provision is subject to paragraph (3) of subdivision (a).

(e) The restraining order included in the summons shall include descriptions of the notices required by paragraphs (2) and (3) of subdivision (b).

SEC. 3. Section 856.5 is added to the Probate Code, to read:

856.5. The court may not grant a petition under this chapter if the court determines that the matter should be determined by a civil action.

SEC. 4. Section 1300 of the Probate Code is amended to read:

1300. In all proceedings governed by this code, an appeal may be taken from the making of, or the refusal to make, any of the following orders:

(a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.

(b) Settling an account of a fiduciary.



- (c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.
- (d) Directing or allowing payment of a debt, claim, or cost.
- (e) Fixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney.
- (f) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a fiduciary.
- (g) Surcharging, removing, or discharging a fiduciary.
- (h) Transferring the property of the estate to a fiduciary in another jurisdiction.
- (i) Allowing or denying a petition of the fiduciary to resign.
- (j) Discharging a surety on the bond of a fiduciary.
- (k) Adjudicating the merits of a claim made under Part 19 (commencing with Section 850) of Division 2.

SEC. 5. Section 1301 of the Probate Code is amended to read:

1301. With respect to guardianships, conservatorships, and other protective proceedings, the grant or refusal to grant the following orders is appealable:

- (a) Granting or revoking of letters of guardianship or conservatorship, except letters of temporary guardianship or temporary conservatorship.
- (b) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.
- (c) Directing, authorizing, approving, or modifying payments, whether for support, maintenance, or education of the ward or conservatee or for a person legally entitled to support, maintenance, or education from the ward or conservatee.
- (d) Granting or denying a petition under Section 2423 or under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4.
- (e) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3 of Division 4.
- (f) Adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Chapter 6 of Part 4 of Division 4.
- (g) Granting or denying a petition under Chapter 3 (commencing with Section 3100) of Part 6 of Division 4.

SEC. 6. Section 1303 of the Probate Code is amended to read:

1303. With respect to a decedent's estate, the grant or refusal to grant the following orders is appealable:

- (a) Granting or revoking letters to a personal representative, except letters of special administration or letters of special administration with general powers.
- (b) Admitting a will to probate or revoking the probate of a will.



- (c) Setting aside a small estate under Section 6609.
- (d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.
- (e) Granting, modifying, or terminating a family allowance.
- (f) Determining heirship, succession, entitlement, or the persons to whom distribution should be made.
- (g) Directing distribution of property.
- (h) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.
- (i) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.
- (j) Determining whether an action constitutes a contest under Chapter 2 (commencing with Section 21320) of Part 3 of Division 11.
- (k) Determining the priority of debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

SEC. 7. Section 5003 of the Probate Code is amended to read:

5003. (a) A holder of property under an instrument of a type described in Section 5000 may transfer the property in compliance with a provision for a nonprobate transfer on death that satisfies the terms of the instrument, whether or not the transfer is consistent with the beneficial ownership of the property as between the person who executed the provision for transfer of the property and other persons having an interest in the property or their successors, and whether or not the transfer is consistent with the rights of the person named as beneficiary.

(b) Except as provided in this subdivision, no notice or other information shown to have been available to the holder of the property affects the right of the holder to the protection provided by subdivision (a). The protection provided by subdivision (a) does not extend to a transfer made after either of the following events:

- (1) The holder of the property has been served with a contrary court order.
- (2) The holder of the property has been served with a written notice of a person claiming an adverse interest in the property. However, this paragraph does not apply to a pension plan to the extent the transfer is a periodic payment pursuant to the plan.

(c) The protection provided by this section does not affect the rights of the person who executed the provision for transfer of the property and other persons having an interest in the property or their successors in disputes among themselves concerning the beneficial ownership of the property.



(d) The protection provided by this section is not exclusive of any protection provided the holder of the property by any other provision of law.

(e) A person shall not serve notice under paragraph (2) of subdivision (b) in bad faith. If the court in an action or proceeding relating to the rights of the parties determines that a person has served notice under paragraph (2) of subdivision (b) in bad faith, the court shall award against the person the cost of the action or proceeding, including a reasonable attorney's fee, and the damages caused by the service.

SEC. 8. Section 5302 of the Probate Code is amended to read:

5302. Subject to Section 5600:

(a) Sums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent. If there are two or more surviving parties, their respective ownerships during lifetime are in proportion to their previous ownership interests under Section 5301 augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before the decedent's death; and the right of survivorship continues between the surviving parties.

(b) If the account is a P.O.D. account:

(1) On death of one of two or more parties, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole party or of the survivor of two or more parties, (A) any sums remaining on deposit belong to the P.O.D. payee or payees if surviving, or to the survivor of them if one or more die before the party, (B) if two or more P.O.D. payees survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide for different shares, and (C) if two or more P.O.D. payees survive, there is no right of survivorship in the event of death of a P.O.D. payee thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) If the account is a Totten trust account:

(1) On death of one of two or more trustees, the rights to any sums remaining on deposit are governed by subdivision (a).

(2) On death of the sole trustee or the survivor of two or more trustees, (A) any sums remaining on deposit belong to the person or persons named as beneficiaries, if surviving, or to the survivor of them if one or more die before the trustee, unless there is clear and convincing evidence of a different intent, (B) if two or more beneficiaries survive, any sums remaining on deposit belong to them in equal and undivided shares unless the terms of the account or deposit agreement expressly provide





for different shares, and (C) if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(d) In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than to transfer the rights of the decedent as part of the decedent’s estate.

(e) A right of survivorship arising from the express terms of the account or under this section, a beneficiary designation in a Totten trust account, or a P.O.D. payee designation, cannot be changed by will.

SEC. 9. Part 4 (commencing with Section 5600) is added to Division 5 of the Probate Code, to read:

PART 4. NONPROBATE TRANSFER TO FORMER SPOUSE

5600. (a) Except as provided in subdivision (b), a nonprobate transfer to the transferor’s former spouse, in an instrument executed by the transferor before or during the marriage, fails if, at the time of the transferor’s death, the former spouse is not the transferor’s surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not cause a nonprobate transfer to fail in any of the following cases:

- (1) The nonprobate transfer is not subject to revocation by the transferor at the time of the transferor’s death.
- (2) There is clear and convincing evidence that the transferor intended to preserve the nonprobate transfer to the former spouse.
- (3) A court order that the nonprobate transfer be maintained on behalf of the former spouse is in effect at the time of the transferor’s death.

(c) Where a nonprobate transfer fails by operation of this section, the instrument making the nonprobate transfer shall be treated as it would if the former spouse failed to survive the transferor.

(d) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on the apparent failure of a nonprobate transfer under this section or who lacks knowledge of the failure of a nonprobate transfer under this section.

(e) As used in this section, “nonprobate transfer” means a provision, other than a provision of a life insurance policy, of either of the following types:

- (1) A provision of a type described in Section 5000.



(2) A provision in an instrument that operates on death, other than a will, conferring a power of appointment or naming a trustee.

5601. (a) Except as provided in subdivision (b), a joint tenancy between the decedent and the decedent's former spouse, created before or during the marriage, is severed as to the decedent's interest if, at the time of the decedent's death, the former spouse is not the decedent's surviving spouse as defined in Section 78, as a result of the dissolution or annulment of the marriage. A judgment of legal separation that does not terminate the status of husband and wife is not a dissolution for purposes of this section.

(b) Subdivision (a) does not sever a joint tenancy in either of the following cases:

(1) The joint tenancy is not subject to severance by the decedent at the time of the decedent's death.

(2) There is clear and convincing evidence that the decedent intended to preserve the joint tenancy in favor of the former spouse.

(c) Nothing in this section affects the rights of a subsequent purchaser or encumbrancer for value in good faith who relies on an apparent severance under this section or who lacks knowledge of a severance under this section.

(d) For purposes of this section, property held in "joint tenancy" includes property held as community property with right of survivorship, as described in Section 682.1 of the Civil Code.

5602. (a) Nothing in this part affects the rights of a purchaser or encumbrancer of real property for value who in good faith relies on an affidavit or a declaration under penalty of perjury under the laws of this state that states all of the following:

(1) The name of the decedent.

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

(3) A description of the real property transferred to the affiant or declarant by an instrument making a nonprobate transfer or by operation of joint tenancy survivorship.

(4) Either of the following, as appropriate:

(A) The affiant or declarant is the surviving spouse of the decedent.

(B) The affiant or declarant is not the surviving spouse of the decedent, but the rights of the affiant or declarant to the described property are not affected by Section 5600 or 5601.

(b) A person relying on an affidavit or declaration made pursuant to subdivision (a) has no duty to inquire into the truth of the matters stated in the affidavit or declaration.

(c) An affidavit or declaration made pursuant to subdivision (a) may be recorded.



5603. Nothing in this part is intended to limit the court's authority to order a party to a dissolution or annulment of marriage to maintain the former spouse as a beneficiary on any nonprobate transfer described in this part, or to preserve a joint tenancy in favor of the former spouse.

5604. (a) This part is operative on January 1, 2002.

(b) Except as provided in subdivision (c), this part applies to an instrument making a nonprobate transfer or creating a joint tenancy whether executed before, on, or after the operative date of this part.

(c) Sections 5600 and 5601 do not apply, and the applicable law in effect before the operative date of this part applies, to an instrument making a nonprobate transfer or creating a joint tenancy in either of the following circumstances:

(1) The person making the nonprobate transfer or creating the joint tenancy dies before the operative date of this part.

(2) The dissolution of marriage or other event that terminates the status of the nonprobate transfer beneficiary or joint tenant as a surviving spouse occurs before the operative date of this part.

SEC. 10. Section 6202 of the Probate Code is repealed.

SEC. 11. Section 21111 of the Probate Code is amended to read:

21111. Except as provided in Section 21110:

(a) If a transfer, other than a residuary gift or a transfer of a future interest, fails for any reason, the property is transferred as follows:

(1) If the transferring instrument provides for an alternative disposition in the event the transfer fails, the property is transferred according to the terms of the instrument.

(2) If the transferring instrument does not provide for an alternative disposition but does provide for the transfer of a residue, the property becomes a part of the residue transferred under the instrument.

(3) If the transferring instrument does not provide for an alternative disposition and does not provide for the transfer of a residue, the property is transferred to the decedent's estate.

(b) If a residuary gift or a future interest is transferred to two or more persons and the share of a transferee fails for any reason, the share passes to the other transferees in proportion to their other interest in the residuary gift or the future interest.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one



million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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