

ASSEMBLY BILL

No. 1784

Introduced by Assembly Member Harman

January 14, 2002

An act to repeal Sections 1071 and 1073 of the Civil Code, to amend Sections 221, 230, 250, 6130, 6205, 6409, 11640, 21101, 21102, 21103, 21104, 21105, 21107, 21108, 21109, 21110, 21111, 21112, 21114, 21115, 21117, 21118, 21120, 21121, 21122, 21131, 21133, 21134, 21135, 21139, and 21140 of, to repeal Sections 21106, 21113, 21116, 21136, 21137, and 21138 of, and to repeal and add Section 21132 to, the Probate Code, relating to construction of instruments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1784, as introduced, Harman. Construction of instruments.

Existing law provides rules for the interpretation of wills, trusts, deeds, and other instruments, which are to be used as interpretive aids where the intention of the transferor is not indicated by the instrument.

This bill would revise the above-described rules for interpretation by, among other things, clarifying the appropriate use of extrinsic evidence to determine the intention of the transferor; making changes in terminology; limiting the application of certain rules to specified transfers; conforming certain rules with the Uniform Probate Code; adding new provisions regarding securities; repealing certain rules; eliminating redundant provisions; and making technical and conforming revisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

SECTION 1. Section 1071 of the Civil Code is repealed.

~~1071. Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.~~

SEC. 2. Section 1073 of the Civil Code is repealed.

~~1073. The law of this State does not include (1) the common law rule of worthier title that a grantor cannot convey an interest to his own heirs or (2) a presumption or rule of interpretation that a grantor does not intend, by a grant to his own heirs or next of kin, to transfer an interest to them. The meaning of a grant of a legal or equitable interest to a grantor's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of grants. This section shall be applied in all cases in which final judgment has not been entered on its effective date.~~

SEC. 3. Section 221 of the Probate Code is amended to read:

221. (a) This chapter does not apply in any case where Section 103, ~~6146~~, 6211, or 6403 applies.

(b) This chapter does not apply in the case of a trust, deed, or contract of insurance, or any other situation, where (1) provision is made dealing explicitly with simultaneous deaths or deaths in a common disaster or otherwise providing for distribution of property different from the provisions of this chapter or (2) provision is made requiring one person to survive another for a stated period in order to take property or providing for a presumption as to survivorship that results in a distribution of property different from that provided by this chapter.

SEC. 4. Section 230 of the Probate Code is amended to read:

230. A petition may be filed under this chapter for any one or more of the following purposes:

(a) To determine for the purposes of Section 103, 220, 222, 223, 224, ~~6146~~, ~~6147~~, 6211, 6242, 6243, ~~6244~~, or 6403, ~~21109~~, ~~21110~~ or other provision of this code whether one person survived another.

(b) To determine for the purposes of Section ~~1389.4~~ of the Civil Code 673 whether issue of an appointee survived the donee.

(c) To determine for the purposes of Section ~~24606~~ 24611 of the Education Code whether a person has survived in order to receive benefits payable under the system.

(d) To determine for the purposes of Section ~~21371~~ 21509 of the Government Code whether a person has survived in order to receive money payable under the system.

~~(e) To determine for the purposes of a case governed by former Sections 296 to 296.8, inclusive, repealed by Chapter 842 of the Statutes of 1983, whether persons have died other than simultaneously.~~

SEC. 5. Section 250 of the Probate Code is amended to read:

250. (a) A person who feloniously and intentionally kills the decedent is not entitled to any of the following:

(1) Any property, interest, or benefit under a will of the decedent, or a trust created by or for the benefit of the decedent or in which the decedent has an interest, including any general or special power of appointment conferred by the will or trust on the killer and any nomination of the killer as executor, trustee, guardian, or conservator or custodian made by the will or trust.

(2) Any property of the decedent by intestate succession.

(3) Any of the decedent's quasi-community property the killer would otherwise acquire under Section 101 or 102 upon the death of the decedent.

(4) Any property of the decedent under Part 5 (commencing with Section 5700) of Division 5.

(5) Any property of the decedent under Part 3 (commencing with Section 6500) of Division 6.

(b) In the cases covered by subdivision (a):

(1) The property interest or benefit referred to in paragraph (1) of subdivision (a) passes as if the killer had predeceased the decedent and Section 21110 does not apply.

(2) Any property interest or benefit referred to in paragraph (1) of subdivision (a) which passes under a power of appointment and by reason of the death of the decedent passes as if the killer had predeceased the decedent, and Section ~~1389.4~~ of the Civil Code ~~does~~ 673 not apply.

(3) Any nomination in a will or trust of the killer as executor, trustee, guardian, conservator, or custodian which becomes effective as a result of the death of the decedent shall be interpreted as if the killer had predeceased the decedent.

1 SEC. 6. Section 6103 of the Probate Code is amended to read:
2 6103. Except as otherwise specifically provided, Chapter 1
3 (commencing with Section 6100), Chapter 2 (commencing with
4 Section 6110), Chapter 3 (commencing with Section 6120),
5 Chapter 4 (commencing with Section 6130), ~~Chapter 5~~
6 ~~(commencing with Section 6140)~~, Chapter 6 (commencing with
7 Section 6200), and Chapter 7 (commencing with Section 6300) *of*
8 *this division, and Part 1 (commencing with Section 21101) of*
9 *Division II*, do not apply where the testator died before January 1,
10 1985, and the law applicable prior to January 1, 1985, continues
11 to apply where the testator died before January 1, 1985.

12 SEC. 7. Section 6205 of the Probate Code is amended to read:
13 6205. “Descendants” mean children, grandchildren, and
14 their lineal descendants of all generations, with the relationship of
15 parent and child at each generation being determined as provided
16 in Section ~~6152~~ 21115. A reference to “descendants” in the plural
17 includes a single descendant where the context so requires.

18 SEC. 8. Section 6409 of the Probate Code is amended to read:
19 6409. (a) If a person dies intestate as to all or part of his or her
20 estate, property the decedent gave during lifetime to an heir is
21 treated as an advancement against that heir’s share of the intestate
22 estate only if one of the following conditions is satisfied:

23 (1) The decedent declares in a contemporaneous writing ~~that~~
24 ~~the gift is to be deducted from the heir’s share of the estate or that~~
25 ~~the gift is an advancement against the heir’s share of the estate or~~
26 ~~that its value is to be deducted from the value of the heir’s share of~~
27 ~~the estate.~~

28 (2) The heir acknowledges in writing that the gift is to be so
29 deducted or is an advancement *or that its value is to be deducted*
30 *from the value of the heir’s share of the estate.*

31 (b) Subject to subdivision (c), the property advanced is to be
32 valued as of the time the heir came into possession or enjoyment
33 of the property or as of the time of death of the decedent, whichever
34 occurs first.

35 (c) If the value of the property advanced is expressed in the
36 contemporaneous writing of the decedent, or in an
37 acknowledgment of the heir made contemporaneously with the
38 advancement, that value is conclusive in the division and
39 distribution of the intestate estate.



(d) If the recipient of the property advanced fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment provides otherwise.

SEC. 9. Section 11640 of the Probate Code is amended to read:

11640. (a) When all debts have been paid or adequately provided for, or if the estate is insolvent, and the estate is in a condition to be closed, the personal representative shall file a petition for, and the court shall make, an order for final distribution of the estate.

(b) The court shall hear and determine and resolve in the order all questions arising under Section ~~6174~~ 21135 (ademption by satisfaction) or Section 6409 (advancements).

(c) If debts remain unpaid or not adequately provided for or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for a reasonable time, subject to Chapter 1 (commencing with Section 12200) of Part 11 (time for closing estate).

SEC. 10. Section 21101 of the Probate Code is amended to read:

21101. Unless the provision or context otherwise requires, this part ~~shall apply~~ *applies* to a will, trust, deed, and any other instrument.

SEC. 11. Section 21102 of the Probate Code is amended to read:

21102. (a) The intention of the transferor as expressed in the instrument controls the legal effect of the dispositions made in the instrument.

(b) The rules of construction ~~expressed~~ in this part apply where the intention of the transferor is not indicated by the instrument.

(c) *Nothing in this section limits the use of extrinsic evidence, to the extent otherwise authorized by law, to determine the intention of the transferor.*

SEC. 12. Section 21103 of the Probate Code is amended to read:

21103. The meaning and legal effect of a disposition in an instrument ~~shall be~~ is determined by the local law of a particular state selected by the transferor in the instrument unless the application of that law is contrary to the rights of the surviving

1 spouse to community and quasi-community property, to any other
2 public policy of this state applicable to the disposition, or, in the
3 case of a will, to Part 3 (commencing with Section 6500) of
4 Division 6.

5 SEC. 13. Section 21104 of the Probate Code is amended to
6 read:

7 21104. As used in this part, ~~“testamentary gift”~~ *“at-death*
8 *transfer”* means a transfer ~~in possession or enjoyment that takes~~
9 ~~effect at or after death~~ *that is revocable during the lifetime of the*
10 *transferor, but does not include a joint tenancy or joint account*
11 *with right of survivorship.*

12 SEC. 14. Section 21105 of the Probate Code is amended to
13 read:

14 21105. Except as *otherwise* provided in Sections 641 and 642,
15 a will passes all property the testator owns at death, including
16 property acquired after execution of the will.

17 SEC. 15. Section 21106 of the Probate Code is repealed.

18 ~~21106. A transfer of property to more than one person vests~~
19 ~~the property in them as owners in common.~~

20 SEC. 16. Section 21107 of the Probate Code is amended to
21 read:

22 21107. If an instrument directs the conversion of real property
23 into money at the transferor’s death, the *real* property and its
24 proceeds shall be deemed personal property from the time of the
25 transferor’s death.

26 SEC. 17. Section 21108 of the Probate Code is amended to
27 read:

28 21108. The law of this state does not include (a) the
29 common-law rule of worthier title that a transferor cannot devise
30 an interest to his or her own heirs or (b) a presumption or rule of
31 interpretation that a transferor does not intend, by a transfer to his
32 or her own heirs or next of kin, to transfer an interest to them. The
33 meaning of a transfer of a legal or equitable interest to a
34 transferor’s own heirs or next of kin, however designated, shall be
35 determined by the general rules applicable to the interpretation of
36 instruments. ~~This section applies to all cases in which a final~~
37 ~~judgment had not been entered as of September 18, 1959.~~

38 SEC. 18. Section 21109 of the Probate Code is amended to
39 read:

1 21109. ~~(a)~~—A transferee who fails to survive the transferor of
2 *an at-death transfer* or until any future time required by the
3 instrument does not take under the instrument.

4 ~~(b) If it cannot be established by clear and convincing evidence~~
5 ~~that the transferee has survived the transferor, it is deemed that the~~
6 ~~beneficiary did not survive the transferor.~~

7 ~~(c) If it cannot be established by clear and convincing evidence~~
8 ~~that the transferee survived until a future time required by the~~
9 ~~instrument, it is deemed that the transferee did not survive until the~~
10 ~~required future time.~~

11 SEC. 19. Section 21110 of the Probate Code is amended to
12 read:

13 21110. (a) Subject to subdivision (b), if a transferee is dead
14 when the instrument is executed, ~~or is treated as if the transferee~~
15 ~~predeceased the transferor~~, or fails *or is treated as failing* to
16 survive the transferor or until a future time required by the
17 instrument, the issue of the deceased transferee take in the
18 transferee's place in the manner provided in Section 240. A
19 transferee under a class gift shall be a transferee for the purpose of
20 this subdivision unless the transferee's death occurred before the
21 execution of the instrument and that fact was known to the
22 transferor when the instrument was executed.

23 (b) The issue of a deceased transferee do not take in the
24 transferee's place if the instrument expresses a contrary intention
25 or a substitute disposition. A requirement that the initial transferee
26 survive ~~for a specified period of time after the death of the~~
27 transferor constitutes a contrary intention. A requirement that the
28 initial transferee survive until a future time that is related to the
29 probate of the transferor's will or administration of the estate of the
30 transferor constitutes a contrary intention.

31 (c) As used in this section, "transferee" means a person who
32 is kindred of the transferor or kindred of a surviving, deceased, or
33 former spouse of the transferor.

34 SEC. 20. Section 21111 of the Probate Code is amended to
35 read:

36 21111. ~~Except as provided in Section 21110:~~

37 ~~(a) If a transfer, other than a residuary gift or a transfer of a~~
38 ~~future interest, (a) Except as provided in subdivision (b) and~~
39 ~~subject to Section 21110, if a transfer fails for any reason, the~~
40 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, *or if the transfer is itself a residuary gift*, the property is transferred to the decedent's estate.

(b) ~~If Subject to Section 21110, 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, *and no alternative disposition is provided*, the share passes to the other transferees in proportion to their other interest in the residuary gift or the future interest.

(c) A transfer of "all my estate" or words of similar import is a residuary gift for purposes of this section.

(d) *If failure of a future interest results in an intestacy, the property passes to the heirs of the transferor determined pursuant to Section 21114.*

SEC. 21. Section 21112 of the Probate Code is amended to read:

21112. A condition in a transfer of a present or future interest that refers to a person's death "with" or "without" issue, or to a person's "having" or "leaving" issue or no issue, or a condition based on words of similar import, is construed to refer to that person's being dead at the time the transfer takes effect in enjoyment and to ~~his or her~~ *that person* either having or not having, as the case may be, issue who are alive at the time of enjoyment.

SEC. 22. Section 21113 of the Probate Code is repealed.

~~21113. (a) A transfer of a present interest to a class includes all persons answering the class description at the transferor's death.~~

~~(b) A transfer of a future interest to a class includes all persons answering the class description at the time the transfer is to take effect in enjoyment.~~

~~(c) A person conceived before but born after the transferor's death or after the time the transfer takes effect in enjoyment takes if the person answers the class description.~~

SEC. 23. Section 21114 of the Probate Code is amended to read:

~~21114. A transfer of a present or future interest to the transferor's or another~~ (a) *If a statute or an instrument provides for transfer of a present or future interest to, or creates a present or future interest in, a designated person's "heirs," "heirs at law," "next of kin," "relatives," or "family," or to "the persons entitled thereto under the intestate succession laws," or to persons described by words of similar import, is a transfer to those who would be the transferor's or other designated person's heirs, their identities and respective shares shall be determined as if the transferor or other designated person were to die intestate at the time when the transfer is to take effect in enjoyment and according to the California statutes of intestate succession of property not acquired from a predeceased spouse in effect at that time words of similar import, the transfer is to the persons, including the state under Section 6800, and in the shares, that would succeed to the designated person's intestate estate under the intestate succession law of the designated person's domicile if the designated person died when the transfer is to take effect in enjoyment. If the designated person's surviving spouse is living but is remarried at the time the transfer is to take effect in enjoyment, the surviving spouse is not an heir of the designated person for purposes of this section.*

(b) *As used in this section, "designated person" includes the transferor.*

SEC. 24. Section 21115 of the Probate Code is amended to read:

21115. (a) Except as provided in subdivision (b), halfbloods, adopted persons, persons born out of wedlock, stepchildren, foster children, and the issue of these persons when appropriate to the class, are included in terms of class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.

(b) In construing a transfer by a transferor who is not the natural parent, a person born to the natural parent shall not be considered the child of that parent unless the person lived while a minor as a regular member of the household of the natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse. In construing a transfer by a transferor who is not the adoptive parent,

1 a person adopted by the adoptive parent shall not be considered the
2 child of that parent unless the person lived while a minor (either
3 before or after the adoption) as a regular member of the household
4 of the adopting parent or of that parent's parent, brother, sister, or
5 surviving spouse.

6 (c) Subdivisions (a) and (b) shall also apply in determining:

7 (1) Persons who would be kindred of the transferor or kindred
8 of a surviving, deceased, or former spouse of the transferor under
9 Section 21110.

10 (2) Persons to be included as issue of a deceased transferee
11 under Section 21110.

12 (3) Persons who would be the transferor's or other designated
13 person's heirs under Section 21114.

14 (d) *The rules for determining intestate succession under this*
15 *section are those in effect at the time the transfer is to take effect*
16 *in enjoyment.*

17 SEC. 25. Section 21116 of the Probate Code is repealed.

18 ~~21116. A testamentary disposition by an instrument,~~
19 ~~including a transfer to a person on attaining majority, is presumed~~
20 ~~to vest at the transferor's death.~~

21 SEC. 26. Section 21117 of the Probate Code is amended to
22 read:

23 ~~21117. Testamentary gifts~~ *At-death transfers* are classified as
24 follows:

25 (a) A specific gift is a transfer of specifically identifiable
26 property.

27 (b) A general gift is a transfer from the general assets of the
28 transferor that does not give specific property.

29 (c) A demonstrative gift is a general gift that specifies the fund
30 or property from which the transfer is primarily to be made.

31 (d) A general pecuniary gift is a pecuniary gift within the
32 meaning of Section 21118.

33 (e) An annuity is a general pecuniary gift that is payable
34 periodically.

35 (f) A residuary gift is a transfer of property that remains after
36 all specific and general gifts have been satisfied.

37 SEC. 27. Section 21118 of the Probate Code is amended to
38 read:

39 21118. (a) If an instrument authorizes a fiduciary to satisfy a
40 pecuniary gift wholly or partly by distribution of property other

1 than money, property selected for that purpose shall be valued at
 2 its fair market value on the date of distribution, unless the
 3 instrument expressly provides otherwise. If the instrument permits
 4 the fiduciary to value the property selected for distribution as of
 5 a date other than the date of distribution, then, unless the
 6 instrument expressly provides otherwise, the property selected by
 7 the fiduciary for that purpose shall ~~have an aggregate fair market~~
 8 ~~value on the date or dates of distribution that, when added to any~~
 9 ~~cash distributed, will amount to no less than the amount of the~~
 10 ~~pecuniary gift as stated in, or determined by, the instrument fairly~~
 11 ~~reflect net appreciation and depreciation (occurring between the~~
 12 ~~valuation date and the date of distribution) in all of the assets from~~
 13 ~~which the distribution could have been made.~~

14 (b) As used in this section, “pecuniary gift” means a transfer
 15 of property made in an instrument that either is expressly stated as
 16 a fixed dollar amount or is a dollar amount determinable by the
 17 provisions of the instrument.

18 SEC. 28. Section 21120 of the Probate Code is amended to
 19 read:

20 21120. The words of an instrument are to receive an
 21 interpretation that will give every expression some effect, rather
 22 than one that will render any of the expressions inoperative.
 23 Preference is to be given to an interpretation of an instrument that
 24 will prevent ~~intestacy failure of a transfer~~, rather than one that will
 25 result in ~~an intestacy failure of a transfer~~.

26 SEC. 29. Section 21121 of the Probate Code is amended to
 27 read:

28 21121. All ~~the~~ parts of an instrument are to be construed in
 29 relation to each other and so as, if possible, to form a consistent
 30 whole. If the meaning of any part of an instrument is ambiguous
 31 or doubtful, it may be explained by any reference to or recital of
 32 that part in another part of the instrument.

33 SEC. 30. Section 21122 of the Probate Code is amended to
 34 read:

35 21122. The words of an instrument are to be given their
 36 ordinary and grammatical meaning unless the intention to use
 37 them in another sense is clear and their intended meaning can be
 38 ascertained. Technical words are not necessary to give effect to a
 39 disposition in an instrument. Technical words ~~in an instrument~~ are
 40 to be considered as having been used in their technical sense unless

1 (a) the context clearly indicates a contrary intention or (b) it
2 satisfactorily appears that the instrument was drawn solely by the
3 transferor and that the transferor was unacquainted with the
4 technical sense.

5 SEC. 31. Section 21131 of the Probate Code is amended to
6 read:

7 21131. A specific gift passes the property transferred subject
8 to any mortgage, deed of trust, or other lien existing at the date of
9 death, without right of exoneration, regardless of a general
10 directive to pay debts contained in the instrument of transfer.

11 SEC. 32. Section 21132 of the Probate Code is repealed.

12 ~~21132. (a) If the transferor intended a specific gift of certain~~
13 ~~securities rather than the equivalent value thereof, the beneficiary~~
14 ~~of the specific gift is entitled only to:~~

15 ~~(1) As much of the transferred securities as is a part of the estate~~
16 ~~at the time of the transferor's death.~~

17 ~~(2) Any additional or other securities of the same entity owned~~
18 ~~by the transferor by reason of action initiated by the entity~~
19 ~~excluding any acquired by exercise of purchase options.~~

20 ~~(3) Securities of another entity owned by the transferor as a~~
21 ~~result of a merger, consolidation, reorganization or other similar~~
22 ~~action initiated by the entity.~~

23 ~~(4) Any additional securities of the entity owned by the~~
24 ~~transferor as a result of a plan of reinvestment if it is a regulated~~
25 ~~investment company.~~

26 ~~(b) Distributions prior to death with respect to a security~~
27 ~~specifically given and not provided for in subdivision (a) are not~~
28 ~~part of the specific gift.~~

29 SEC. 33. Section 21132 is added to the Probate Code, to read:

30 21132. (a) If a transferor executes an instrument that makes
31 an at-death transfer of securities and the transferor then owned
32 securities that meet the description in the instrument, the transfer
33 includes additional securities owned by the transferor at death to
34 the extent the additional securities were acquired by the transferor
35 after the instrument was executed as a result of the transferor's
36 ownership of the described securities and are securities of any of
37 the following types:

38 (1) Securities of the same organization acquired by reason of
39 action initiated by the organization or any successor, related, or

1 acquiring organization, excluding any acquired by exercise of
2 purchase options.

3 (2) Securities of another organization acquired as a result of a
4 merger, consolidation, reorganization, or other distribution by the
5 organization or any successor, related, or acquiring organization.

6 (3) Securities of the same organization acquired as a result of
7 a plan of reinvestment.

8 (b) Distributions in cash before death with respect to a
9 described security are not part of the transfer.

10 SEC. 34. Section 21133 of the Probate Code is amended to
11 read:

12 21133. A recipient of an *at-death transfer* of a specific gift has
13 ~~the right to the remaining property specifically given~~ *a right to the*
14 *property specifically given, to the extent the property is owned by*
15 *the transferor at the time the gift takes effect in possession or*
16 *enjoyment, and all of the following:*

17 (a) Any balance of the purchase price (together with any
18 security-interest agreement) owing from a purchaser to the
19 transferor at ~~death~~ *the time the gift takes effect in possession or*
20 *enjoyment* by reason of sale of the property.

21 (b) Any amount of an eminent domain award for the taking of
22 the property unpaid at ~~death~~ *the time the gift takes effect in*
23 *possession or enjoyment.*

24 (c) Any proceeds unpaid at ~~death~~ *the time the gift takes effect*
25 *in possession or enjoyment* on fire or casualty insurance on or
26 *other recovery for injury to the property.*

27 (d) Property owned by the transferor at ~~death~~ *the time the gift*
28 *takes effect in possession or enjoyment and acquired as a result of*
29 *foreclosure, or obtained in lieu of foreclosure, of the security*
30 *interest for a specifically given obligation.*

31 (e) *Real or tangible personal property owned by the transferor*
32 *at the time the gift takes effect in possession or enjoyment that the*
33 *transferor acquired as a replacement for specifically given real or*
34 *tangible personal property.*

35 SEC. 35. Section 21134 of the Probate Code is amended to
36 read:

37 21134. (a) Except as otherwise provided in this section, if
38 specifically given property is sold *or mortgaged* by a conservator
39 *or by an agent acting within the authority of a durable power of*
40 *attorney for an incapacitated principal, the beneficiary transferee*

1 of the specific gift has the right to a general pecuniary gift equal
2 to the net sale price of, *or the amount of the unpaid loan on*, the
3 property.

4 (b) Except as otherwise provided in this section, if an eminent
5 domain award for the taking of specifically given property is paid
6 to a conservator *or to an agent acting within the authority of a*
7 *durable power of attorney for an incapacitated principal*, or if the
8 proceeds on fire or casualty insurance on, *or recovery for injury*
9 *to*, specifically gifted property are paid to a conservator *or to an*
10 *agent acting within the authority of a durable power of attorney*
11 *for an incapacitated principal*, the recipient of the specific gift has
12 the right to a general pecuniary gift equal to the eminent domain
13 award or the insurance proceeds *or recovery*.

14 (c) ~~This~~ *For the purpose of the references in this section to a*
15 *conservator, this section does not apply if, after the sale, mortgage,*
16 *condemnation, fire, or casualty, or recovery, the conservatorship*
17 *is terminated and the transferor survives the termination by one*
18 *year.*

19 (d) *For the purpose of the references in this section to an agent*
20 *acting with the authority of a durable power of attorney for an*
21 *incapacitated principal, (1) “incapacitated principal” means a*
22 *principal who is an incapacitated person, (2) no adjudication of*
23 *incapacity before death is necessary, and (3) the acts of an agent*
24 *within the authority of a durable power of attorney are presumed*
25 *to be for an incapacitated principal.*

26 (e) The right of the ~~beneficiary~~ *transferee* of the specific gift
27 under this section shall be reduced by any right the ~~beneficiary~~
28 *transferee* has under Section 21133.

29 SEC. 36. Section 21135 of the Probate Code is amended to
30 read:

31 21135. (a) Property given by a transferor during his or her
32 lifetime to a ~~beneficiary~~ *person* is treated as a satisfaction of a
33 ~~testamentary gift~~ *an at-death transfer* to that person in whole or
34 in part only if one of the following conditions is satisfied:

35 (1) The instrument provides for deduction of the lifetime gift
36 from the ~~testamentary gift~~ *at-death transfer*.

37 (2) The transferor declares in a contemporaneous writing that
38 ~~the transfer is to be deducted from the testamentary gift~~ *or is in*
39 *satisfaction of the testamentary gift at-death transfer or that its*
40 *value is to be deducted from the value of the at-death transfer.*

(3) The transferee acknowledges in writing that the gift is in satisfaction of the ~~testamentary gift at-death transfer or that its value is to be deducted from the value of the at-death transfer.~~

(4) *The property given is the subject of a specific gift of that property to that person.*

(b) Subject to subdivision (c), for the purpose of partial satisfaction, property given during lifetime is valued as of the time the transferee came into possession or enjoyment of the property or as of the time of death of the transferor, whichever occurs first.

(c) If the value of the gift is expressed in the contemporaneous writing of the transferor, or in an acknowledgment of the transferee made contemporaneously with the gift, that value is conclusive in the division and distribution of the estate.

(d) *If the transferee fails to survive the transferor, the gift is treated as a full or partial satisfaction of the gift, as appropriate, in applying Sections 21110 and 21111 unless the transferor's contemporaneous writing provides otherwise.*

SEC. 37. Section 21136 of the Probate Code is repealed.

~~21136. If the transferor after execution of the transfer instrument enters into an agreement for the sale or transfer of specifically given property, the beneficiary of the specific gift has the right to the property subject to the remedies of the purchaser or transferee.~~

SEC. 38. Section 21137 of the Probate Code is repealed.

~~21137. If the transferor after execution of the transfer instrument places a charge or encumbrance on specifically given property for the purpose of securing the payment of money or the performance of any covenant or agreement, the beneficiary of the specific gift has the right to the property subject to the charge or encumbrance.~~

SEC. 39. Section 21138 of the Probate Code is repealed.

~~21138. If the transferor after execution of the transfer instrument alters, but does not wholly divest, the transferor's interest in property that is specifically given by a conveyance, settlement, or other act, the beneficiary of the specific gift has the right to the remaining interest of the transferor in the property.~~

SEC. 40. Section 21139 of the Probate Code is amended to read:

21139. The rules stated in Sections 21133 to ~~24438~~ 21135, inclusive, are not exhaustive, and nothing in those sections is

1 intended to increase the incidence of ademption under the law of
2 this state.

3 SEC. 41. Section 21140 of the Probate Code is amended to
4 read:

5 21140. (a) ~~Except as otherwise provided and subject to~~
6 ~~subdivision (b), this~~ This part applies to all instruments, regardless
7 of when they were executed.

8 ~~(b) The repeal of former Sections 1050, 1051, 1052, and 1053~~
9 ~~and the amendment of former Section 1054, by Chapter 842 of the~~
10 ~~Statutes of 1983, do not apply to cases where the decedent died~~
11 ~~before January 1, 1985. If the decedent died before January 1,~~
12 ~~1985, the case is governed by the former provisions as they would~~
13 ~~exist had Chapter 842 of the Statutes of 1983 not been enacted.~~

