

Assembly Bill No. 1784

CHAPTER 138

An act to repeal Sections 1071 and 1073 of the Civil Code, to amend Sections 221, 230, 250, 6103, 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.

[Approved by Governor July 10, 2002. Filed with
Secretary of State July 11, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1784, 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.

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

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 Section 1071 of the Civil Code is repealed.

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 Section 1073 of the Civil Code is repealed.

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, 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, 6211, 6242, 6243, 6403, 21109, 21110 or other provision of this code whether one person survived another.

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

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

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 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.

SEC. 6. Section 6103 of the Probate Code is amended to read:

6103. Except as otherwise specifically provided, Chapter 1 (commencing with Section 6100), Chapter 2 (commencing with Section 6110), Chapter 3 (commencing with Section 6120), Chapter 4 (commencing with Section 6130), Chapter 6 (commencing with Section 6200), and Chapter 7 (commencing with Section 6300) of this division, and Part 1 (commencing with Section 21101) of Division 11, do not apply where the testator died before January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

SEC. 7. Section 6205 of the Probate Code is amended to read:

6205. “Descendants” mean children, grandchildren, and their lineal descendants of all generations, with the relationship of parent and child at each generation being determined as provided in Section 21115. A reference to “descendants” in the plural includes a single descendant where the context so requires.

SEC. 8. Section 6409 of the Probate Code is amended to read:

6409. (a) If a person dies intestate as to all or part of his or her estate, property the decedent gave during lifetime to an heir is treated as an advancement against that heir’s share of the intestate estate only if one of the following conditions is satisfied:

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

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

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

(c) If the value of the property advanced is expressed in the contemporaneous writing of the decedent, or in an acknowledgment of the heir made contemporaneously with the advancement, that value is conclusive in the division and 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 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 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 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 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 spouse to community and quasi-community property, to any other public policy of this state applicable to the disposition, or, in the case of a will, to Part 3 (commencing with Section 6500) of Division 6.

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

21104. As used in this part, “at-death transfer” means a transfer that is revocable during the lifetime of the transferor, but does not include a joint tenancy or joint account with right of survivorship.

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

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

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

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

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

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



21108. The law of this state does not include (a) the common law rule of worthier title that a transferor cannot devise an interest to his or her own heirs or (b) a presumption or rule of interpretation that a transferor does not intend, by a transfer to his or her own heirs or next of kin, to transfer an interest to them. The meaning of a transfer of a legal or equitable interest to a transferor's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of instruments.

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

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

(b) If it cannot be determined by clear and convincing evidence that the transferee survived until a future time required by the instrument, it is deemed that the transferee did not survive until the required future time.

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

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

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

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

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

21111. (a) Except as provided in subdivision (b) and subject to Section 21110, if a transfer 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, or if the transfer is itself a residuary gift, the property is transferred to the decedent's estate.

(b) 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 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.

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

21114. (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 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 transferor'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, a person adopted by the adoptive parent shall not be considered the child of that parent unless the person lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent or of that parent's parent, brother, sister, or surviving spouse.

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

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

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

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

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

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

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

21117. At-death transfers are classified as follows:

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

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

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

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

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

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

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

21118. (a) If an instrument authorizes a fiduciary to satisfy a pecuniary gift wholly or partly by distribution of property other than money, property selected for that purpose shall be valued at its fair market value on the date of distribution, unless the instrument expressly provides otherwise. If the instrument permits the fiduciary to value the



property selected for distribution as of a date other than the date of distribution, then, unless the instrument expressly provides otherwise, the property selected by the fiduciary for that purpose shall fairly reflect net appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which the distribution could have been made.

(b) As used in this section, “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.

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

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

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

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

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

21122. The words of an instrument are to be given their ordinary and grammatical meaning unless the intention to use them in another sense is clear and their intended meaning can be ascertained. Technical words are not necessary to give effect to a disposition in an instrument. Technical words are to be considered as having been used in their technical sense unless (a) the context clearly indicates a contrary intention or (b) it satisfactorily appears that the instrument was drawn solely by the transferor and that the transferor was unacquainted with the technical sense.

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

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

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

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

21132. (a) If a transferor executes an instrument that makes an at-death transfer of securities and the transferor then owned securities that meet the description in the instrument, the transfer includes



additional securities owned by the transferor at death to the extent the additional securities were acquired by the transferor after the instrument was executed as a result of the transferor's ownership of the described securities and are securities of any of the following types:

(1) Securities of the same organization acquired by reason of action initiated by the organization or any successor, related, or acquiring organization, excluding any acquired by exercise of purchase options.

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

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

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

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

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

(a) Any balance of the purchase price (together with any security agreement) owing from a purchaser to the transferor at the time the gift takes effect in possession or enjoyment by reason of sale of the property.

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

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

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

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

21134. (a) Except as otherwise provided in this section, if after the execution of the instrument of gift specifically given property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, the transferee of the specific gift has the right to a general pecuniary gift equal to the net sale price of, or the amount of the unpaid loan on, the property.

(b) Except as otherwise provided in this section, if an eminent domain award for the taking of specifically given property is paid to a conservator or to an agent acting within the authority of a durable power



of attorney for an incapacitated principal, or if the proceeds on fire or casualty insurance on, or recovery for injury to, specifically gifted property are paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the recipient of the specific gift has the right to a general pecuniary gift equal to the eminent domain award or the insurance proceeds or recovery.

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

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

(e) The right of the transferee of the specific gift under this section shall be reduced by any right the transferee has under Section 21133.

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

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

(1) The instrument provides for deduction of the lifetime gift from the at-death transfer.

(2) The transferor declares in a contemporaneous writing that the gift is in satisfaction of the at-death transfer or that its 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 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 same property that is the subject of a specific gift 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 the case may be, in applying



Sections 21110 and 21111 unless the transferor's contemporaneous writing provides otherwise.

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

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

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

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

21139. The rules stated in Sections 21133 to 21135, inclusive, are not exhaustive, and nothing in those sections is intended to increase the incidence of ademption under the law of this state.

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

21140. This part applies to all instruments, regardless of when they were executed.

