

Assembly Bill No. 2216

CHAPTER 447

An act to amend Sections 6401 and 6402 of the Probate Code, relating to intestate succession.

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2216, Keeley. Intestate succession: domestic partners.

Under the existing law of intestate succession, the surviving spouse is entitled to a specified share of the decedent's separate property that is not effectively disposed of by will.

Effective July 1, 2003, this bill would extend this entitlement to a decedent's domestic partner, as specified. This bill would also make conforming and technical changes. The bill would further require the Secretary of State to send to each registered domestic partner who registered prior to January 1, 2003, a letter describing changes in the law of intestate succession proposed by this bill and the implication of those changes for domestic partners. The bill would require the Secretary of State to provide a similar notice with all requests for a Declaration of Domestic Partnership form on and after January 1, 2003, and to make that notice available on the Internet.

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

SECTION 1. Section 6401 of the Probate Code is amended to read:

6401. (a) As to community property, the intestate share of the surviving spouse is the one-half of the community property that belongs to the decedent under Section 100.

(b) As to quasi-community property, the intestate share of the surviving spouse is the one-half of the quasi-community property that belongs to the decedent under Section 101.

(c) As to separate property, the intestate share of the surviving spouse or surviving domestic partner, as defined in subdivision (b) of Section 37, is as follows:

(1) The entire intestate estate if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister.

(2) One-half of the intestate estate in the following cases:

(A) Where the decedent leaves only one child or the issue of one deceased child.

(B) Where the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them.

(3) One-third of the intestate estate in the following cases:

(A) Where the decedent leaves more than one child.

(B) Where the decedent leaves one child and the issue of one or more deceased children.

(C) Where the decedent leaves issue of two or more deceased children.

SEC. 2. Section 6402 of the Probate Code is amended to read:

6402. Except as provided in Section 6402.5, the part of the intestate estate not passing to the surviving spouse or surviving domestic partner, as defined in subdivision (b) of Section 37, under Section 6401, or the entire intestate estate if there is no surviving spouse or domestic partner, passes as follows:

(a) To the issue of the decedent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(b) If there is no surviving issue, to the decedent's parent or parents equally.

(c) If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, to the grandparent or grandparents equally, or to the issue of those grandparents if there is no surviving grandparent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(e) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by the issue of a predeceased spouse, to that issue, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(f) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, or issue of a predeceased spouse, but the decedent is survived by next of kin, to the next of kin in equal degree, but where there are two or more collateral kindred in equal degree who claim through different ancestors, those who claim through



the nearest ancestor are preferred to those claiming through an ancestor more remote.

(g) If there is no surviving next of kin of the decedent and no surviving issue of a predeceased spouse of the decedent, but the decedent is survived by the parents of a predeceased spouse or the issue of those parents, to the parent or parents equally, or to the issue of those parents if both are deceased, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

SEC. 3. (a) On or before March 1, 2003, the Secretary of State shall send the following letter to the mailing address on file of each registered domestic partner who registered prior to January 1, 2003:

“Dear Registered Domestic Partner:

This letter is being sent to all persons who have registered with the Secretary of State as a domestic partner.

As of July 1, 2003, California’s law of intestate succession will change. The intestate succession law specifies what happens to a person’s property when that person dies without a will, trust, or other estate plan.

Under existing law, if a domestic partner dies without a will, trust, or other estate plan, a surviving domestic partner cannot inherit any of the deceased partner’s separate property. Instead, surviving relatives, including, for example, children, brothers, sisters, nieces, nephews, or parents may inherit the deceased partner’s separate property.

Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner’s separate property in the same manner as a surviving spouse. This change will mean that the surviving domestic partner would inherit a third, a half, or all of the deceased partner’s separate property, depending on whether the deceased domestic partner has surviving children or other relatives. This change does not affect any community or quasi-community property that the deceased partner may have had.

This change in the intestate succession law will not affect you if you have a will, trust, or other estate plan.

If you do not have a will, trust, or other estate plan and you do not wish to have your domestic partner inherit your separate property in the manner provided by the revised law, you may prepare a will, trust, or other estate plan, or terminate your domestic partnership.

Under existing law, your domestic partnership is automatically terminated if you or your partner married or died while you were registered as domestic partners. It is also terminated by you sending your partner or your partner sending to you by certified mail a notice



terminating the domestic partnership, or by you and your partner no longer sharing a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership with the Secretary of State in order to establish the actual date of termination of the domestic partnership. You can obtain a Notice of Termination of Domestic Partnership from the Secretary of State's office.

If your domestic partnership has terminated because you sent your partner or your partner sent to you a notice of termination of your domestic partnership, you must immediately file a Notice of Termination of Domestic Partnership. If you do not file that notice, your former domestic partner may inherit under the new law. However, if your domestic partnership has terminated because you or your partner married or you and your partner no longer share a common residence, neither you nor your former partner may inherit from the other under this new law.

If you have any questions about this change, please consult an estate planning attorney. If you cannot find an estate planning attorney in your locale, please contact your county bar association for a referral.

Sincerely,

The Secretary of State''

(b) Beginning on January 1, 2003, the Secretary of State shall provide the following notice with all requests for the Declaration of Domestic Partnership form. The Secretary of State shall also attach the notice to the Declaration of Domestic Partnership form that is provided to the general public on the Secretary of State's Web site:

“NOTICE TO POTENTIAL DOMESTIC PARTNER
REGISTRANTS

As of July 1, 2003, California's law of intestate succession will change. The intestate succession law specifies what happens to a person's property when that person dies without a will, trust, or other estate plan.

Under the law prior to July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, a surviving domestic partner cannot inherit any of the deceased partner's separate property. Instead, surviving relatives, including, for example, children, brothers, sisters, nieces, nephews, or parents may inherit the deceased partner's separate property.



Under the law to take effect July 1, 2003, if a domestic partner dies without a will, trust, or other estate plan, the surviving domestic partner will inherit the deceased partner's separate property in the same manner as a surviving spouse. This change will mean that the surviving domestic partner would inherit a third, a half, or all of the deceased partner's separate property, depending on whether the deceased domestic partner has surviving children or other relatives. This change does not affect any community or quasi-community property that the deceased partner may have had.

This change in the intestate succession law will not affect you if you have a will, trust, or other estate plan.

If you do not have a will, trust, or other estate plan, and you do not wish to have your domestic partner inherit your separate property in the manner provided by the revised law, you may prepare a will, trust, or other estate plan, or terminate your domestic partnership.

Under existing law, your domestic partnership is automatically terminated if you or your partner married or died while you were registered as domestic partners. It is also terminated by you sending your partner or your partner sending to you by certified mail a notice terminating the domestic partnership, or by you and your partner no longer sharing a common residence. In all cases, you are required to file a Notice of Termination of Domestic Partnership with the Secretary of State in order to establish the actual date of termination of the domestic partnership. You can obtain a Notice of Termination of Domestic Partnership from the Secretary of State's office.

If your domestic partnership has terminated because you sent your partner or your partner sent to you a notice termination of your domestic partnership, you must immediately file a Notice of Termination of Domestic Partnership. If you do not file that notice, your former domestic partner may inherit under the new law. However, if your domestic partnership has terminated because you or your partner married or you and your partner no longer share a common residence, neither you nor your former partner may inherit from the other under this new law.

If you have any questions about this change, please consult an estate planning attorney. If you cannot find an estate planning attorney in your locale, please contact your county bar association for a referral."

SEC. 4. The provisions of Sections 1 and 2 of this act shall become operative on July 1, 2003.

