

ASSEMBLY BILL

No. 548

Introduced by Assembly Member Cristina Garcia

February 23, 2015

An act to amend and repeal Section 8465 of the Probate Code, relating to estates and trusts.

LEGISLATIVE COUNSEL'S DIGEST

AB 548, as introduced, Cristina Garcia. Estates: administrators.

Under existing law, when an individual dies intestate, a court is authorized to appoint certain specified persons to act as that individual's personal representative and to administer the individual's estate. Further, existing law prescribes an order of preference for appointment among those persons. Existing law authorizes the court to appoint an administrator who is nominated by a person who is not a United States resident if the nominator would otherwise be entitled to appointment as an administrator of the decedent's estate, after meeting specified conditions. Under existing law, the provisions on administrators who are nominated by a person who is not a United States resident are to be repealed on January 1, 2016.

This bill would delete the January 1, 2016 date of repeal, and thereby extend indefinitely the authorization of the court to appoint an administrator who is nominated by a person who is not a United States resident.

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

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

1 SECTION 1. Section 8465 of the Probate Code, as amended
2 by Section 1 of Chapter 635 of the Statutes of 2012, is amended
3 to read:

4 8465. (a) The court may appoint as administrator a person
5 nominated by any of the following persons:

- 6 (1) A person otherwise entitled to appointment.
- 7 (2) A person who would otherwise be entitled for appointment
8 but who is ineligible for appointment under paragraph (4) of
9 subdivision (a) of Section 8402 because he or she is not a resident
10 of the United States.

11 (3) The guardian or conservator of the estate of a person
12 otherwise entitled to appointment. The nomination shall be made
13 in writing and filed with the court.

14 (b) If a person making a nomination for appointment of an
15 administrator is the surviving spouse or domestic partner, child,
16 grandchild, other issue, parent, brother or sister, or grandparent of
17 the decedent, the nominee has priority next after those in the class
18 of the person making the nomination.

19 (c) If a person making a nomination for appointment of an
20 administrator is other than a person described in subdivision (b),
21 the court in its discretion may appoint either the nominee or a
22 person of a class lower in priority to that of the person making the
23 nomination, but other persons of the class of the person making
24 the nomination have priority over the nominee.

25 (d) If a person making a nomination for appointment of an
26 administrator is a person described in paragraph (2) of subdivision
27 (a), the court shall not appoint a nominee who is not a California
28 resident to act as administrator. For California residents nominated
29 under paragraph (2) of subdivision (a), the court shall consider
30 whether the nominee is capable of faithfully executing the duties
31 of the office. The court may in its discretion deny the appointment
32 and appoint another person. In determining whether to appoint the
33 nominee, the factors the court may consider include, but are not
34 limited to, the following:

- 35 (1) Whether the nominee has a conflict of interest with the heirs
36 or any other interested party.
- 37 (2) Whether the nominee had a business or personal relationship
38 with the decedent or decedent’s family before the decedent’s death.

1 (3) Whether the nominee is engaged in or acting on behalf of
2 an individual, a business, or other entity that solicits heirs to obtain
3 the person’s nomination for appointment as administrator.

4 (4) Whether the nominee has been appointed as a personal
5 representative in any other estate.

6 (e) If the court decides to appoint a nominee under the
7 circumstances described in subdivision (d), the court shall require
8 the nominee to obtain bond, unless the court orders otherwise for
9 good cause. Any order for good cause must be supported by
10 specific findings of fact, and shall consider the need for the
11 protection of creditors, heirs, and any other interested parties.
12 Before waiving a bond, the court shall consider all other
13 alternatives, including, but not limited to, the deposit of property
14 in the estate pursuant to Chapter 3 (commencing with Section
15 9700) of Part 5 on the condition that the property, including any
16 earnings thereon, will not be withdrawn except on authorization
17 of the court. The waiver of all of the heirs of the requirement of a
18 bond shall not constitute good cause.

19 (f) If the appointed nominee ceases to be a California resident
20 following his or her appointment, he or she shall be deemed to
21 have resigned as administrator for the purposes of Article 7
22 (commencing with Section 8520). The court shall not lose
23 jurisdiction of the proceeding by any resignation under this
24 subdivision.

25 (g) By accepting appointment as personal representative, the
26 nominee shall submit personally to the jurisdiction of the court.

27 ~~(h) This section shall remain in effect only until January 1, 2016,~~
28 ~~and as of that date is repealed, unless a later enacted statute, that~~
29 ~~is enacted before January 1, 2016, deletes or extends that date.~~

30 SEC. 2. Section 8465 of the Probate Code, as added by Section
31 2 of Chapter 635 of the Statutes of 2012, is repealed.

32 ~~8465. (a) The court may appoint as administrator a person~~
33 ~~nominated by a person otherwise entitled to appointment or by the~~
34 ~~guardian or conservator of the estate of a person otherwise entitled~~
35 ~~to appointment. The nomination shall be made in writing and filed~~
36 ~~with the court.~~

37 ~~(b) If a person making a nomination for appointment of an~~
38 ~~administrator is the surviving spouse or domestic partner, child,~~
39 ~~grandchild, other issue, parent, brother or sister, or grandparent of~~

- 1 the decedent, the nominee has priority next after those in the class
- 2 of the person making the nomination.
- 3 ~~(e) If a person making a nomination for appointment of an~~
- 4 ~~administrator is other than a person described in subdivision (b),~~
- 5 ~~the court in its discretion may appoint either the nominee or a~~
- 6 ~~person of a class lower in priority to that of the person making the~~
- 7 ~~nomination, but other persons of the class of the person making~~
- 8 ~~the nomination have priority over the nominee.~~
- 9 ~~(d) This section shall become operative on January 1, 2016.~~