

AMENDED IN ASSEMBLY MAY 3, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1051

Introduced by Assembly Member Kaloogian

February 25, 1999

An act to amend Sections ~~9000 and 19000~~ 9053 and 9250 of, ~~and to add Section 9005 to~~ to add Section 1214 to, and to repeal Section 1218 of, the Probate Code, relating to decedent's estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1051, as amended, Kaloogian. Estates: claims.

Existing law provides for the administration of decedents' estates and the administration of claims against an estate.

This bill would eliminate the requirement that a creditor of an estate establish that his or her attorney had no actual knowledge of the administration of the estate in order to establish liability upon the part of the personal representative for failure to notify the creditor of the administration of the estate; revise the requirements for notifying a creditor of the allowance or rejection of his or her claim; and make technical changes.

~~Existing law establishes the right of creditors to file a claim, as defined, during the administration of a decedent's estate.~~

~~This bill would revise the definition of a claim to include a claim that the decedent was bound by contract to make a will, trust, or other promise to leave property on death, and would provide that no action or proceeding may be filed for~~

~~imposition of a constructive trust or for other specified equitable claim without compliance with the provisions regarding this right.~~

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 9000 of the Probate Code is~~

2 *SECTION 1. Section 1214 is added to the Probate*
3 *Code, to read:*

4 *1214. If a notice or other paper is required or*
5 *permitted to be mailed, delivered, served, or otherwise*
6 *given to a person who is represented by an attorney of*
7 *record, the notice or other paper shall also be mailed to*
8 *this attorney, unless otherwise specified in a request for*
9 *special notice.*

10 *SEC. 2. Section 1218 of the Probate Code is repealed.*

11 ~~1218. If a notice or other paper is required or~~
12 ~~permitted to be mailed, delivered, served, or otherwise~~
13 ~~given to a person who is represented by an attorney of~~
14 ~~record, the notice or other paper shall also be mailed to~~
15 ~~this attorney, unless otherwise specified in a request for~~
16 ~~special notice.~~

17 *SEC. 3. Section 9053 of the Probate Code is amended*
18 *to read:*

19 9053. (a) If the personal representative believes that
20 notice to a particular creditor is or may be required by
21 this chapter and gives notice based on that belief, the
22 personal representative is not liable to any person for
23 giving the notice, whether or not required by this
24 chapter.

25 (b) If the personal representative fails to give notice
26 required by this chapter, the personal representative is
27 not liable to any person for the failure, unless a creditor
28 establishes all of the following:

- 29 (1) The failure was in bad faith.
- 30 (2) ~~Neither the~~ *The* creditor ~~nor the~~ *attorney*
31 ~~representing the creditor in the matter~~ had *no* actual
32 knowledge of the administration of the estate before



1 expiration of the time for filing a claim, and payment
2 would have been made on the creditor's claim in the
3 course of administration if the claim had been properly
4 filed.

5 (3) Within 16 months after letters were first issued to
6 a general personal representative, the creditor did both
7 of the following:

8 (A) Filed a petition requesting that the court in which
9 the estate was administered make an order determining
10 the liability of the personal representative under this
11 subdivision.

12 (B) At least 30 days before the hearing on the petition,
13 caused notice of the hearing and a copy of the petition to
14 be served on the personal representative in the manner
15 provided in Chapter 4 (commencing with Section 413.10)
16 of Title 5 of Part 2 of the Code of Civil Procedure.

17 (c) Nothing in this section affects the liability of the
18 estate, if any, for the claim of a creditor, and the personal
19 representative is not liable for the claim to the extent it
20 is paid out of the estate or could be paid out of the estate
21 pursuant to Section 9103.

22 (d) A personal representative has a duty to make
23 reasonably diligent efforts to identify reasonably
24 ascertainable creditors of the decedent.

25 *SEC. 4. Section 9250 of the Probate Code is amended*
26 *to read:*

27 9250. (a) When a claim is filed, the personal
28 representative shall allow or reject the claim in whole or
29 in part.

30 (b) The allowance or rejection shall be in writing. The
31 personal representative shall file the allowance or
32 rejection with the court clerk and give notice to the
33 creditor as provided in ~~Section 1215~~ *Part 2 (commencing*
34 *with Section 1200) of Division 3*, together with a copy of
35 the allowance or rejection.

36 (c) The allowance or rejection shall contain the
37 following information:

- 38 (1) The name of the creditor.
39 (2) The total amount of the claim.
40 (3) The date of issuance of letters.



- 1 (4) The date of the decedent’s death.
- 2 (5) The estimated value of the decedent’s estate.
- 3 (6) The amount allowed or rejected by the personal
- 4 representative.
- 5 (7) Whether the personal representative is authorized
- 6 to act under the Independent Administration of Estates
- 7 Act (Part 6 (commencing with Section 10400)).
- 8 (8) A statement that the creditor has three months in
- 9 which to act on a rejected claim.
- 10 (d) The Judicial Council may prescribe an allowance
- 11 or rejection form, which may be part of the claim form.
- 12 Use of a form prescribed by the Judicial Council is
- 13 deemed to satisfy the requirements of this section.
- 14 (e) This section does not apply to a demand the
- 15 personal representative elects to treat as a claim under
- 16 Section 9154.

17 ~~amended to read:~~

18 ~~9000. As used in this division:~~

19 ~~(a) “Claim” means a demand for payment for any of~~
20 ~~the following, whether due, not due, accrued or not~~
21 ~~accrued, or contingent, and whether liquidated or~~
22 ~~unliquidated:~~

23 ~~(1) Liability of the decedent, whether arising in~~
24 ~~contract, tort, or otherwise.~~

25 ~~(2) Liability for taxes incurred before the decedent’s~~
26 ~~death, whether assessed before or after the decedent’s~~
27 ~~death, other than property taxes and assessments secured~~
28 ~~by real property liens.~~

29 ~~(3) Liability of the estate for funeral expenses of the~~
30 ~~decedent.~~

31 ~~(4) Liability for any claim that decedent died bound~~
32 ~~by a contract to make a will, trust, or other promise to~~
33 ~~leave property on decedent’s death, whether the claim is~~
34 ~~for specific property or otherwise.~~

35 ~~(b) “Claim” does not include a dispute regarding a~~
36 ~~claim that decedent did not have title to specific property~~
37 ~~alleged to be included in the decedent’s estate.~~

38 ~~SEC. 2. Section 9005 is added to the Probate Code, to~~
39 ~~read:~~



1 ~~9005. No action or proceeding may be filed for~~
2 ~~imposition of a constructive trust or other equitable claim~~
3 ~~described in paragraph (4) of subdivision (a) of Section~~
4 ~~9000 against property passing through the estate unless~~
5 ~~the action or proceeding complies with this part.~~

6 ~~SEC. 3. Section 19000 of the Probate Code is amended~~
7 ~~to read:~~

8 ~~19000. As used in this part:~~

9 ~~(a) "Claim" means a demand for payment for any of~~
10 ~~the following, whether due, not due, accrued or not~~
11 ~~accrued, or contingent, and whether liquidated or~~
12 ~~unliquidated:~~

13 ~~(1) Liability of the deceased settlor, whether arising in~~
14 ~~contract, tort, or otherwise.~~

15 ~~(2) Liability for taxes incurred before the deceased~~
16 ~~settlor's death, whether assessed before or after the~~
17 ~~deceased settlor's death, other than property taxes and~~
18 ~~assessments secured by real property liens.~~

19 ~~(3) Liability for the funeral expenses of the deceased~~
20 ~~settlor.~~

21 ~~(4) Liability for any claim that decedent is bound by~~
22 ~~a contract to make a will, trust, or other promise to leave~~
23 ~~property on decedent's death, whether for specific~~
24 ~~property or otherwise.~~

25 ~~(b) "Claim" does not include a dispute regarding a~~
26 ~~claim that decedent did not have title to specific property~~
27 ~~alleged to be included in the trust estate.~~

28 ~~(c) "Claimant" means a person who may have a~~
29 ~~claim, as defined in subdivision (a), against trust property~~
30 ~~and who has filed a timely claim pursuant to Section~~
31 ~~19100.~~

32 ~~(d) "Trust" means a trust described in Section 18200,~~
33 ~~or, if a portion of a trust, that portion that remained~~
34 ~~subject to the power of revocation at the deceased~~
35 ~~settlor's death.~~

36 ~~(e) "Deceased settlor" means a deceased person who,~~
37 ~~at the time of his or her death, held the power to revoke~~
38 ~~the trust in whole or in part.~~



1 ~~(f) “Debts” means all claims, as defined in subdivision~~
2 ~~(a), all expenses of administration, and all other proper~~
3 ~~charges against the trust estate, including taxes.~~

