

RESOLUTION 02-03-2014

DIGEST

Probate: Continuation of Non-Resident Beneficiaries Eligibility to Nominate Administrators
Amends Probate Code section 8465 to eliminate the January 1, 2016 sunset provision that allows non-resident beneficiaries of probate estates to nominate a person to serve as administrator.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Similar to Resolution 04-02-2012, which was approved in principle.

Reasons:

This resolution amends Probate Code section 8465 to eliminate the January 1, 2016 sunset provision that allows non-resident beneficiaries of probate estates to nominate a person to serve as administrator. This resolution should be approved in principle because qualified heirs should be eligible to nominate a California administrator regardless of the heirs' residency and the 2013 amendments permitting this result should not expire.

Prior to 2013, the law prohibited a nonresident heir from nominating an estate administrator when a decedent died intestate. In 2012, the Legislature passed AB 1670 (Lara), sponsored by the Trusts & Estates Section of the State Bar, to eliminate this restriction, however it included a sunset provision to expire on January 1, 2016. (Stats. 2012, ch. 635, § 1.) The analysis of that bill reported: "For example, suppose that a decedent had immigrated to the United States from another country, was financially successful and accumulated a significant estate, then died as a resident of California leaving heirs only in that other country. Those heirs would be prohibited from nominating an administrator (even a United States resident) to manage the estate, even though they stand to receive all of the assets. The public administrator would then be appointed, even over the objection of the family members and would take its fees out of the assets to be received by the decedent's family in that other country."

This bill was subject to considerable analysis and debate and resolved a prior conflict in the law in this area, where one appellate opinion permitted non-residents to nominate and another did not. No evidence exists that the new law has created any problems. Hence, it makes sense to remove the sunset provision and permit the law to become permanent.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 8465, as currently in effect, and to repeal the version of section 8465 that is scheduled to replace the current version on January 1, 2016, to read as follows:

§ 8465

- 1 (a) The court may appoint as administrator a person nominated by any of the following
- 2 persons:
- 3 (1) A person otherwise entitled to appointment.
- 4 (2) A person who would otherwise be entitled for appointment but who is ineligible for
- 5 appointment under paragraph (4) of subdivision (a) of Section 8402 because he or she is not a
- 6 resident of the United States.

7 (3) The guardian or conservator of the estate of a person otherwise entitled to
8 appointment. The nomination shall be made in writing and filed with the court. (b) If a person
9 making a nomination for appointment of an administrator is the surviving spouse or domestic
10 partner, child, grandchild, other issue, parent, brother or sister, or grandparent of the decedent,
11 the nominee has priority next after those in the class of the person making the nomination.

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

16 (d) If a person making a nomination for appointment of an administrator is a person
17 described in paragraph (2) of subdivision (a), the court shall not appoint a nominee who is not a
18 California resident to act as administrator. For California residents nominated under paragraph
19 (2) of subdivision (a), the court shall consider whether the nominee is capable of faithfully
20 executing the duties of the office. The court may in its discretion deny the appointment and
21 appoint another person. In determining whether to appoint the nominee, the factors the court may
22 consider include, but are not limited to, the following:

23 (1) Whether the nominee has a conflict of interest with the heirs or any other interested
24 party.

25 (2) Whether the nominee had a business or personal relationship with the decedent or
26 decedent's family before the decedent's death.

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

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

31 (e) If the court decides to appoint a nominee under the circumstances described in
32 subdivision (d), the court shall require the nominee to obtain bond, unless the court orders
33 otherwise for good cause. Any order for good cause must be supported by specific findings of
34 fact, and shall consider the need for the protection of creditors, heirs, and any other interested
35 parties. Before waiving a bond, the court shall consider all other alternatives, including, but not
36 limited to, the deposit of property in the estate pursuant to Chapter 3 (commencing with Section
37 9700) of Part 5 on the condition that the property, including any earnings thereon, will not be
38 withdrawn except on authorization of the court. The waiver of all of the heirs of the requirement
39 of a bond shall not constitute good cause.

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

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

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

49
50 § 8465.

51 ~~(a) The court may appoint as administrator a person nominated by a person otherwise~~
52 ~~entitled to appointment or by the guardian or conservator of the estate of a person otherwise~~
53 ~~entitled to appointment. The nomination shall be made in writing and filed with the court.~~

54 ~~(b) If a person making a nomination for appointment of an administrator is the surviving~~
55 ~~spouse or domestic partner, child, grandchild, other issue, parent, brother or sister, or~~
56 ~~grandparent of the decedent, the nominee has priority next after those in the class of the person~~
57 ~~making the nomination.~~

58 ~~(c) If a person making a nomination for appointment of an administrator is other than a~~

59 ~~person described in subdivision (b), the court in its discretion may appoint either the nominee or~~
60 ~~a person of a class lower in priority to that of the person making the nomination, but other~~
61 ~~persons of the class of the person making the nomination have priority over the nominee.~~
62 ~~(d) This section shall become operative on January 1, 2016.~~

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of San Francisco

STATEMENT OF REASONS

The Problem: Prior to 2013, a nonresident heir was prohibited, as an unintended consequence of a reorganization of the relevant probate code statutes in 1980, from nominating an estate administrator when a decedent died intestate. In 2012 AB 1670 corrected this unintended result effective January 1, 2013, and it became the law of California. As it now stands, a non-resident heir can now nominate an estate administrator, provided that the nominee is a California resident. However, a sunset provision will cause the law to lapse on January 1, 2016, after which the law will revert to its pre-2013 state.

Suppose that a decedent had immigrated from Mexico, accumulated a significant estate, then died as a California resident leaving heirs in Mexico. Under pre-2013 law the heirs would be prohibited from nominating an administrator (even a California resident) to manage the estate, even though the family stands to receive all of the assets. The family would have no say over who controls the decedent's estate. AB 1670 corrected this unjust and unintended result. It was endorsed by the Trusts and Estates Section of the State Bar, California Rural Legal Assistance, MALDEF, and the United Farm Workers, among others.

The Solution: This resolution would eliminate the sunset provision contained in the current law, making the changed brought about by AB 1670 permanent. It is of course proper that only residents serve as administrators. But in a nation (and a state) of immigrants such as ours the requirement that only heirs who are United States residents can *nominate* another resident to serve has no basis in logic or fact. All heirs should have a say in who administers the estate they benefit from, as long as the administrator is a resident.

LEGISLATIVE HISTORY

None known

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule. None known

AUTHOR AND/OR PERMANENT CONTACT: James Lamping, Knitter Lamping, LLP, 450 Sansome Street Third Floor, San Francisco, CA 94114; (415) 983-9500; jim@jimlamping.com; Ciarán O'Sullivan, The Law Office of Ciarán O'Sullivan, 1 Post Street, San Francisco, CA 94104. Voice (415) 391-3711; fax (415) 513-0449; e-mail ciaran@cosullivanlaw.com

RESPONSIBLE FLOOR DELEGATE: Jim Lamping; Ciarán O'Sullivan

SECTION COMMENTS TO RESOLUTION 02-03-2014

TRUSTS AND ESTATE SECTION OF THE STATE BAR OF CALIFORNIA

APPROVE

Disclaimer:

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