

RESOLUTION 02-08-2014 (as amended)

DIGEST

Probate: Clarification of the Term “Partner” Who is Not Eligible to Serve as Administrator
Amends Probate Code section 8402 to specify that the term “partner” means a partner in a business partnership and not a domestic partner.

RESOLUTIONS COMMITTEE RECOMMENDATION
APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Probate Code section 8402 to specify that the term “partner” means a partner in a business partnership and not a domestic partner. This resolution should be approved in principle because it would clarify that the term “partner” means a partner of a partnership as defined in Corporations Code section 16101, subdivision (9).

Probate Code section 8461 lists those who are entitled to priority if a decedent dies without a will. The surviving spouse or domestic partner has the highest priority. Although the Probate Code clearly allows a domestic partner to serve as a personal representative of an estate, there is a valid concern that an unhappy beneficiary of the estate may attempt to assert the current ambiguity in this code section in an attempt to challenge the appointment of a domestic partner. Clarifying the term “partner” would prohibit that possible challenge.

TEXT OF RESOLUTION

RESOLVED, that the Conference of California Bar Associations recommends that legislation be sponsored to amend Probate Code section 8402 to read as follows:

§ 8402

1 (a) Notwithstanding any other provision of this chapter, a person is not competent to act
2 as personal representative in any of the following circumstances:

3 (1) The person is under the age of majority.

4 (2) The person is subject to a conservatorship of the estate or is otherwise incapable of
5 executing, or is otherwise unfit to execute, the duties of the office.

6 (3) There are grounds for removal of the person from office under Section 8502.

7 (4) The person is not a resident of the United States.

8 (5) The person is a surviving partner of the decedent and an interested person objects to
9 the appointment. This provision is not intended to apply to domestic partners in that capacity,
10 including domestic partners registered pursuant to Section 297 of the Family Code.

11 (b) Paragraphs (4) and (5) of subdivision (a) do not apply to a person named as executor
12 or successor executor in the decedent’s will.

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

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Probate Code section 8402(a)(5), specifically states that a surviving partner is ineligible to serve as the personal representative of a decedent's estate, unless they are specifically named as executor or successor executor under the will. The generic use of the word "partner" raises concerns for those of us who represent LGBT clients, who are registered or not registered. Specifically, the concern is that someone could raise this Probate Code section as a challenge to the appointment of a partner (whether domestic partner or long-time unregistered partner) as the personal representative, where the decedent did not leave a Will. Probate Code section 8402(a)(5) restates former Probate Code section 421, which was originally enacted in 1931 to address concerns related to the appointment of a business partner as the administrator of a deceased partner's estate. Since the word "partner" as used today means more than a business relationship, it is necessary to clarify the specific intent of the statute to apply only to a partnership as defined in the Corporations Code.

The Solution: Under the proposed amendment, Probate Code section 8402(a)(5) will clearly define "~~partner~~" as that term is defined in the Corporations Code and exclude domestic partners from being subject to challenge under this Probate Code section.

LEGISLATIVE HISTORY

Not known.

IMPACT STATEMENT

The proposed resolution does not affect any other law, statute or rule.

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