

PROBATE ADVISORY COMMITTEE  
Probate Law Revision

Forty-third Meeting

(Joint meeting with Bar Committee on Probate Law and Procedure)

Dates) 1:30 p.m., Friday, December 15, 1967  
and: and  
Times) 9:00 a.m., Saturday, December 16, 1967  
Place: Suite 2201 Lloyd Center  
(This Board Room is at the head of the  
spiral stairway on the Central Plaza,  
or take elevator to the medical section.)  
Portland, Oregon

Suggested Agenda

1. Approval of minutes of November meeting.
2. Miscellaneous matters.
3. Allocation of Income Tab 16.  
Discussion to be led by Mr. McMurchie.
4. Discharge of Encumbrances Tab 19. (continued)  
Discussion to be led by Mr. Riddlesbarger.
5. Partial Distribution Tab 22.  
Discussion to be led by Mr. Richardson.
6. Accounting and Distribution Tab 23.  
Discussion to be led by Mr. Richardson.

PLEASE NOTE: Presentation of Inheritance Tax by  
Pat Lisbakken committee will be first  
item on January 19.

PLEASE NOTE: Meeting Place, Lloyd Center.

ADVISORY COMMITTEE  
Probate Law Revision

Forty-third Meeting, December 15 and 16, 1967  
(Joint Meeting with Bar Committee on Probate Law and Procedure)

Minutes

The forty-third meeting of the advisory committee (a joint meeting with the Committee on Probate Law and Procedure, Oregon State Bar) was convened at 1:30 p.m., Friday, December 15, 1967, in Suite 2201, Lloyd Center, Portland, by Vice Chairman Zollinger.

The following members of the advisory committee were present: Allison, Butler, Frohnmayer, Jaureguy, Riddlesbarger and Zollinger. Dickson, Carson, Gooding, Husband, Lisbakken and Mapp were absent. (Dickson and Mapp did attend the Saturday session.)

The following members of the Bar Committee were present: Buhlinger, Gilley, Krause, Meyers, Kraemer, Mayer, McKay, Thalhofer, Smith and Richardson. Anderson, Field, Heisler, Lovett, Piazza, Rhoten, Pendergrass, Shetterly, Thomas, Bettis and Warden were absent. (Field and Thomas did attend the Saturday session.)

Also present was Mr. Jack McMurchie, Portland attorney and James Sorte from the staff of Legislative Counsel.

Approval of Minutes

Frohnmayer pointed out that a motion made by Zollinger was seconded by Allison and not Zollinger, as shown in the minutes on page 3, Tab 18, Claims. Sorte also mentioned a correction in the next to the last sentence of Lundy's Fiscal Report, the words "Legislative Counsel Committee" should be changed to "Law Improvement Committee." With these corrections the minutes of the November meeting were approved as presented.

Miscellaneous Matters

Zollinger reported to the committee of a meeting held between Judge Dickson, Mr. Allison and Zollinger and members of the title companies in connection with Tab 15. Some of their objections were editorial in nature and would be taken care of by Mr. Allison without need for committee action, the others will be discussed during the Saturday session.

Tab 19. Discharge of Encumbrances

Riddlesbarger led the discussion of Tab 19. He outlined the events which preceded the preparation of Tab 19 by himself and Mr. Carson. Further remarks were addressed to the tabled motion by Zollinger that the committees adopt Section 2-607 of the Uniform Probate Code, which Riddlesbarger opposed. Riddlesbarger preferred the language in the Wisconsin Code, Section 863.13. Riddlesbarger also referred to Bill 7, which was presented to the Law Improvement Committee for submission to the 1965 Legislature, but was never introduced. Riddlesbarger did not favor exoneration in all cases, whether voluntary or involuntary.

The committees discussed the probable policy considerations in the courts differentiating between allowing exoneration if the encumbrance was after the making of a will, but not when the encumbrance existed at the time of making the will. The general consensus was that no set rule would guarantee that the wishes of the testator would be fulfilled.

Zollinger asked the committees to vote on his motion to adopt, in substance, the provisions of Section 2-607 of the Uniform Probate Code. The motion failed.

Riddlesbarger then discussed Tab 19 as it related to Bill 7. He suggested an amendment to subsection (3) by eliminating paragraph (b), retaining subparagraphs (A), (B), and (C) and inserting a new subparagraph (D) as follows:

"(D) If the encumbrance is an involuntary one."

Kraemer pointed out the same purpose could be accomplished by changing "voluntary" to "involuntary" in paragraph (a) and "involuntary" to "voluntary" in paragraph (b).

Riddlesbarger moved, seconded by Krause, to approve Section 1 of Tab 19. The motion carried.

Section 2: (Tab 19)

Riddlesbarger read the minutes of previous meetings to the committees so they would remember what they had done before concerning ORS 116.140 and 116.145, and their adoption of both of them in substance. He then read comments from Jaureguy and Love on "Right to Redemption." Zollinger expressed the opinion that the committees intended to permit a personal representative to pay the debt on an encumbrance on the estate when it appeared to be in the best interests of the estate, without prejudice to the creditors. He said that this was completely separate

from the right of the personal representative to redeem from an execution sale, which he did not favor. The committees generally did not favor the language that appeared in Sections 2 and 3 of Tab 19.

Riddlesbarger then suggested that a committee be appointed to prepare language in line with the committees' expressed intent. Zollinger appointed Riddlesbarger, Butler and Allison to make recommendations at the January meeting.

#### Tab 16. Allocation of Income

Jack McMurchie led the discussion of Tab 16 which had been prepared by him. He pointed out to the committees that this was intended to go in the Principal and Income Chapter when it was first drafted. McMurchie felt subsection (3) did not belong in the Probate Code, but should be in the Principal and Income Chapter. Zollinger expressed the view that it could be placed in the Probate Code, with a possible reference to the Principal and Income Chapter.

Zollinger suggested that Sorte discuss the placement of Section 3 with Lundy to determine where it should go. He also asked that Lundy determine how reference should be made to the federal statute in the proposal.

The committees discussed the various meanings that could be applied to a direction in a will to "pay all my just debts and taxes." There were various proposals advanced and Zollinger asked Riddlesbarger to draft something to go in the definition of wills section to cover this matter.

#### Tab 22. Partial Distribution

Richardson led discussion of Tab 22, which has comparable provisions in the Uniform Probate Code on page III-77.

Jaureguay suggested amendments to Tab 22 as follows:

"Section 1. Upon application by the personal representative or other interested person and after such notice to such persons, if any, as the court may prescribe, the court may enter an order authorizing the personal representative to deliver any of the property of the estate to the person or persons who under the will or under the rules of intestate succession would, upon final distribution, be entitled to such property if the court finds that:

"(a) (Would be the same.)

"(b) After such distribution there would be sufficient assets remaining to pay all remaining expenses of administration and unpaid claims against the estate.

"Section 4. If after partial distribution of assets, it appears that all or any part of the property distributed is required for the payment of any claim against the estate, including determined and undetermined state and federal tax liabilities, the personal representative shall apply by petition to the court for a decree for the return of the property distributed or any part thereof. Notice of the application shall be given to the distributees and to their sureties, if any, at least ten days before the application is made. Upon hearing of the application, the court may order a return of the property or its value at the time of distribution, or any part or portion thereof, and may specify the time within which such payment or return shall be made. If payment is not made or property returned within the time specified, the persons so failing to return such assets may be adjudged in contempt of court and judgment may be entered against them."

Zollinger felt the changes suggested by Jaureguy for Section 1 could be made by Legislative Counsel without committee action. This would also apply to Section 2.

In Section 4 the general feeling of the committees was that there should be more than notice within ten days of application for return of property. A motion by Kraemer, seconded by Krause, that citation and hearing be held upon application to recover property from a distributee. Carried.

In discussing the provision for establishing the value of the property, Richardson pointed out that the committees had determined earlier that the value of the property would be set as of the date of distribution.

Zollinger expressed opposition to Jaureguy's proposal to provide for contempt of court if property is not returned. Gilley and Butler favored striking the words "by execution" in the proposed language in Tab 22. Butler moved to strike the words "by execution", Myers seconded, and the motion carried.

Richardson inquired of the language in the Uniform Probate Code, Section 3-601, page III-77, which was not contained in the proposed draft. Zollinger suggested that this would be covered in material to be presented at the Saturday session.

Tab 23. Accounting and Distribution

Richardson led the discussion of Tab 23. He pointed out that the draft was similar to pages III-91, 96 and III-77 of the Uniform Probate Code.

### Section 1. Liability of personal representative

Krause questioned whether paragraphs (a) and (b) of subsection (2) should be conjunctive, but the consensus was that either one could stand alone.

In discussing subsection (3), Allison pointed out that he had been instructed at the last meeting to incorporate Section 3-509 of the Uniform Probate Code into Tab 15.

Richardson commented that in the Uniform Probate Code, Section 3-701, page III-91, provision was made for a very short closing statement.

The committees then discussed the desirability of having a time within which the personal representative must account for or close the estate. Allison pointed out that there is a provision that any interested party may petition for an accounting and final distribution.

Richardson moved approval of Section 1, as amended. Kraemer seconded the motion, and it carried.

### Section 2. Personal representative not liable

Discussion about the duty of the personal representative to insure against loss led to Allison being charged with the responsibility of seeing that the personal representative would not be liable if he was without fault.

Kraemer expressed doubt about the last sentence of Section 2. Richardson read ORS 117.640 and 117.650, which led to Frohnmayer moving that the last sentence of Section 2 be deleted. The motion was seconded by Krause, and carried.

### Section 3. Accounting and distribution

Richardson advised the committees that the language in section 3 was taken from the guardianship code.

Frohnmayer moved, seconded by Buhlinger, that paragraph (b) of subsection (2) be amended as follows: delete "property, rents, income, issues, profits and proceeds from property" and insert "money and property". The motion carried. Allison questioned the word "periods" in the last sentence of paragraph

(b) of subsection (2) and the committees agreed it should be changed to "period".

Frohmayer raised the question of whether the vouchers should be filed with the county clerks. A motion to strike the second sentence of paragraph (c) of subsection (2) failed for lack of second.

Butler moved, seconded by Frohmayer, the adoption of Section 3. The motion carried, the word "affirmative" had been stricken from paragraph (a) of subsection (3).

Section 4. Notice, hearing on settlement of account and petition for distribution

Richardson pointed out that Section 4 substitutes mailed notice for published notice and protects the rights of creditors or others having claims by requiring that they get notice.

Allison noted that in paragraph (b) it should read "each devisee" because it does not involve legatees. He also advised the new members of the committees that the provisions of this section contains the only requirements for mailed notice to persons who might be interested in the estate, and that is in connection with the filing of the final account. In discussing this, Zollinger informed the committees that he would ask for further discussion of this matter at the Saturday meeting.

Frohmayer again raised the question of submitting vouchers as provided in paragraph (c) of subsection (2) of section 3 and moved that it be amended to read as follows:

"Vouchers for disbursement shall accompany the account unless otherwise provided by order or rule of court." The motion was seconded by Krause and carried.

Frohmayer also questioned the necessity of a detailed account when there is a will and everything is left to the widow. Zollinger asked Frohmayer to prepare wording to take care of such situations for presentation at Saturday's meeting.

Section 5. Objections to final account and petition

Thalhofer pointed out that the reference should be to Section 4, rather than Section 3 in the first sentence.

Richardson returned to Section 4 with respect to setting the time for hearing by the personal representative and Zollinger agreed that should be amended to read "set the day

for filing objections" and not setting the time for hearing. It was amended by acclamation.

After discussing the requirement for setting the time and place, Zollinger suggested that the words "in the court in which the probate is heard" be added to Section 5, and Richardson suggested they be placed at the end of the first sentence, or between "thereof" and "specifying".

Butler moved approval of Section 5, as it is to be amended by Allison. The motion was seconded by Thalhofer and carried.

Richardson moved the meeting adjourn and Meyers seconded the motion and carried. The meeting adjourned at 4:45 p.m.

The meeting was reconvened at 9 a.m., Saturday, December 16, 1967, by Chairman Dickson in Suite 2201, Lloyd Center, Portland.

The following members of the advisory committee were present: Dickson, Allison, Butler, Frohnmayer, Jaureguy, Mapp and Zollinger.

The following members of the Bar Committee were present: Field, Gilley, Kraemer, Krause, Mayer, Meyers, Richardson, Smith and Thomas.

Also present was James Sorte.

Judge Dickson reviewed the events and discussion of the meeting of a subcommittee and the title company representatives.

Allison said the views expressed by the title company representatives was not whether a title be defended, but whether they will have to defend it. His changes are in Tab 12 and Tab 15. In Tab 15, section 2, he changed "elective share of surviving spouse" to "rights of surviving spouse to elect against the will" which he felt was more understandable. In Section 6 he added an exception, "except as provided in this section."

Allison read Section 17 of the third draft as follows:

"A personal representative may sell, mortgage, lease or otherwise dispose of property of the estate and pay claims, family allowance, elective share of surviving spouse, administrative expenses and distribution without notice, hearing or court order, subject to the following:"

He outlined that the title company representatives objected to an earlier provision that the personal representative could treat the property as though it were his own. They did not feel the personal representative should be given such broad powers. Following this, the committees again discussed at length the distinction between power and authority and Mapp explained the theory of the distinction as used in the Uniform Probate Code.

Dickson pointed out that the title company representatives objected first to insurability of title and this was corrected by amendments. The second objection was their belief that real property specifically devised would be sold without notice, which they felt would be highly improper.

Zollinger moved that the following be deleted from subsection (1), "Pay claims, family allowance, elective share of surviving spouse and administrative expenses for the purposes of distribution." Dickson read subsection (1) of Section 17, as it would then read:

"A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order, subject to the following:"

The motion carried.

Allison read a suggested amendment, paragraph (a) of subsection (1) so that it would read as follows:

"If the property is specifically devised, unless the will shall otherwise provide, or if its sale would be in contravention of a provision of the will, it may not be sold except on hearing or order of the court."

Allison also discussed the amount of the bond, which he had set at \$2,500. The committees discussed leaving it to the court to increase the amount of bond, and it was felt that it should be increased, if necessary, without specific order of the court. The approved language was:

"Unless the court, by rule or order, shall otherwise direct."

It was Allison's feeling that with this provision, if the bond was sufficient, the title company would not question it, but if it was not sufficient to cover the amount of money to be realized from the sale, the personal representative would have to either increase his surety bond or go into court and ask

the court to fix a different amount.

Zollinger moved to amend paragraph (b) of subsection (1) to read as follows:

"If the inventory shows that the value of real property to be sold is more than \$5,000, the amount of the bond shall be increased prior to sale by the amount of cash to be realized from the sale, unless the court, by rule or order, shall otherwise direct."

Jaureguy moved to strike "rule or", Kraemer seconded the motion, and the motion failed on a tie vote, with Chairman Dickson voting against the motion.

Richardson then moved to delete "or order". The motion was seconded by Butler and carried.

Allison pointed out that Section 2 is similar to the language of the Uniform Probate Code, except for the deletion of the words "by any provision of the will of the deceased."

The committees discussed whether a bona fide purchaser would get good title if real property was sold in contravention of the will. Allison read Section 21 of the third draft, which is Section 19 in the second draft, as follows:

"A person dealing with or assisting the personal representative without actual knowledge . . . ."

In view of this provision he felt subsection (2) could be eliminated entirely. Frohnmayer moved deletion of subsection (2). The motion was seconded by Krause and carried.

Frohnmayer then moved to delete "jurisdictional defect, including the case where the alleged decedent is found to be alive," from subsection (1). The motion was seconded by Thomas and carried. The last sentence will now read:

"The protection here expressed extends to instances where some jurisdictional irregularity occurred in proceedings leading to the issuance of letters."

Zollinger felt the entire sentence should be deleted and Dickson agreed and suggested it be left to Allison for final drafting.

Mapp again raised the question of the power of the personal representative to sell, mortgage, lease or otherwise convey

title to property of the estate without court order, especially in connection with Section 17 and 21. He then discussed the matter of power and authority. He did not feel that the provisions of Section 17 were consistent with those in Section 21.

Allison expressed concern that the title companies would oppose the proposed probate code, if they felt they had no protection in the code when it is submitted to the legislature. He did not feel the title companies should have to read the provisions of every will because of an isolated few cases where the personal representative might sell property in derogation of the will. He pointed out that the fundamental policy of the whole code is to simplify the probate of 100,000 cases and assume the risk of dishonesty or error in one.

After discussion on the desirability of giving the personal representative broad powers and limit his authority, it was suggested that Section 17 be amended to read:

"The personal representative has power to sell, mortgage, lease or otherwise deal with property in the estate but he is not authorized to exercise that power and he will be liable if he does so, except as provided in paragraph (a) and (b) of this section."

Further amendment would make it read: "but the exercise of such power is not authorized" and then continue with paragraph (a). Mapp suggested the following: "This gives the basic power, if he improperly exercises the power, he will be surcharged, but the purchaser will be protected."

Since no complete agreement was reached by the committees, Dickson suggested that Mapp and Allison prepare some language during the noon recess for further consideration.

In discussing Section 19, Allison pointed out that the words "of record" were taken out. Thomas thought they should be taken out the second time, and he so moved. The motion carried. The section now reads:

"Shall not be subject to rights of creditors of decedent or liens or encumbrances or against his heirs or devisees."

#### Tab 23. Accounting and Distribution

Zollinger reminded the committees that Frohnmayer had questioned the necessity of requiring a detailed accounting in some estates, as provided in Section 3. He proposed the following amendment:

Subsection (4) of Section 3, "Notwithstanding the

provisions in subsections (2) and (3) hereof, if all creditors have been paid in full and if the beneficiaries of the estate approve in writing, the personal representative need not file any interim accounts as required in subsections (1) and (2), and in lieu of the account required in subsection (3), he may file as his final account his verified statement, including the following information:

"(a) The period covered by the accounting.

"(b) A statement that all creditors have been paid in full.

"(c) A statement that all Oregon income, inheritance and personal property taxes, if any, either have been paid or will be paid prior to final closing of the estate and that receipts, releases or clearances therefor will be procured and filed prior to closing or such taxes will be secured by bond, deposit or otherwise.

"(d) A petition for an order authorizing the personal representative to distribute the estate to the persons and in the portions specified there."

Frohmayer moved, seconded by Zollinger, the adoption of this additional subsection. The motion carried.

#### Section 6. Conclusiveness of order settling account

Richardson moved the adoption of Section 6. The motion was seconded by Krause and carried.

#### Section 7. Decree of final distribution

Zollinger questioned whether the provisions of Section 7 would apply to those who inherit real property as well as personal property. Richardson thought they would both be treated the same way. Allison outlined that, except for income, the decree would not distribute anything because it goes to the parties by intestate succession or by the will.

Zollinger recommended deleting "to whom distribution is to be made" and inserting "in whom title to the estate not otherwise vested" making Section 7 read as follows:

"In a decree of final distribution the clerk shall designate the persons in whom title to the estate is vested and the proportion or parts of the estate or the amounts to which each is entitled by the court or pursuant to the will."

Frohmayer asked for a better word than "applied" and it was left to Allison to make any change.

Jaureguy suggested adding the words "real and personal" and leaving out paragraph (j). Thomas seconded the motion.

Gilley suggested that the first sentence of subsection (2) be amended by deleting "reopen" and inserting "vacate."

Allison felt the last sentence of subsection (1), before paragraph (a) should be amended to read as follows:

"The decree of distribution shall also contain any findings of the court with respect to:".

With the above amendments, Richardson moved adoption of Section 7.

Dickson also recommended deleting the following from paragraph (i):

", and whether the distributees take the property subject to a claim of this kind".

Zollinger brought up the provisions of Section 7, Tab 18, page 5, relating to the rights and duties which may arise when contingent claims are allowed. Allison then proposed revised language as follows:

"Section 7. Contingent and unliquidated claims. (1) A claim on a contingent or unliquidated debt shall be presented as any other claim.

"(2) If the debt becomes absolute or liquidated before distribution of the estate, the claim shall be paid in the same manner as absolute or liquidated claims of the same class.

"(3) If the debt does not become absolute or liquidated before distribution of the estate, the court shall provide for payment of the claim by any of the following methods:

"(a) The creditor and personal representative may determine, by agreement, arbitration or compromise, the value of the debt, and upon approval thereof by the court, the claim may be allowed and paid in the same manner as a claim on an absolute or liquidated debt.

"(b) The court may order the personal representative to make distribution of the estate, but to retain sufficient funds to pay the claim if and when the debt becomes absolute

or liquidated. The estate proceeding may not be kept open for this purpose more than two years after distribution of the remainder of the estate. If the debt does not become absolute or liquidated within that time, the funds retained, after payment therefrom of any expenses accruing during that time, shall be distributed to the distributees. If the debt thereafter becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate received by them. The court may require the distributees to give bond approved by the court and executed by a surety company qualified to transact surety business in this state, for the satisfaction of their liability to the creditor.

"(c) The court may order the personal representative to make distribution of the estate as though the claim did not exist.

"(d) If after the distribution the debt thereafter becomes absolute or liquidated, the distributees are liable to the creditor to the extent of the estate received by them. The court may require the distributees to give bond approved by the court and executed by a surety company qualified to transact surety business in this state, for the satisfaction of their liability to the creditor.

"(e) Such other method as the court may order."

Richardson again moved adoption of Section 7 as amended. The motion was seconded by Thomas and carried.

The meeting recessed at 12 noon.

When the meeting reconvened at 1 p.m., the following members were present: Advisory committee, Dickson, Zollinger, Allison, Frohnmayer, Jaureguy and Mapp. Bar committee, Gilley, Krause, Mayer, Smith, Thomas and Richardson.

Also present was Sorte.

#### January Meeting

Dickson announced that the next meeting will be January 19 and 20 at the Lloyd Center.

#### Tab 15. Section 17

Allison reported on the new material prepared by Mapp and himself during the noon recess, which would read as follows:

"(1) The personal representative has power to sell,

mortgage, lease and otherwise deal with property of the estate without notice herein or court order.

"(2) Exercise of the foregoing powers of the personal representative without court order is improper:

"(a) If in contravention of the provisions of the will;  
or,

"(b) If the property is specifically devised and the will does not authorize its sale; or,

"(c) If the inventory value of the real property sold is more than \$5,000 and the amount of the bond has not been increased in an amount equal to the amount of cash to be realized in the sale, unless the court directs otherwise."

Gilley suggested that somewhere in the code, it should be pointed out that power and authority are two different matters, and this might calm the fears of people who see the unlimited power. The committees discussed where this definition should go in the code. Dickson asked Mapp to prepare a draft on this and make suggestions as to where it should go in the proposed code.

After suggestions for amendments to the above proposal, Mapp read the section again as follows:

"(1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.

"(2) Exercise of the foregoing power by the personal representative without court order is improper:

"(a) If in contravention of the provisions of the will;

"(b) If the property is specifically devised and the will does not authorize its sale;

"(c) If the inventory value of the property sold is more than \$5,000 and the amount of the bond has not been increased in an amount equal to the amount of cash to be realized on the sale, unless the court directs otherwise."

Zollinger raised the question of the necessity for citation and hearing and court order for sale of property specifically devised. He preferred authorizing the court to adjust the bond without citation and court order, but not for

sale of property specifically devised without hearing prior to the sale.

Allsion suggested that paragraphs (a) and (b) could be drafted in one sentence, as follows:

"(a) If in contravention to the provisions of the will, or if the property is specifically devised and the will does not authorize its sale, unless the court so orders, upon citation to interested devisees, hearing and order of the court." He pointed out this language could be improved later.

Mapp then moved adoption of this proposal as amended, seconded by Allison. The motion carried. Krause voted no.

Dickson asked if Section 21 should be amended in view of these changes, but Allison said he felt it would not be necessary.

Frohmayer called attention to the provision in the Uniform Probate Code, Section 3-405, regarding the requirement for notice of appointment of the personal representative to be mailed to the heirs or devisees within 30 days after the appointment. Dickson had previously favored such a requirement.

Discussion then followed on Tab 12, page 12, and the possibility of amending it to accomplish the purposes of Section 3-405 of the Uniform Probate Code.

Zollinger moved that the committees adopt, in substance, the provisions of Section 3-405 of the Uniform Probate Code, as subsection (4) of Section 7 of the third amended draft in Tab 15. The motion was seconded by Frohmayer and carried.

Gilley asked if this would not require a mailing of the heirs in a testate situation. Dickson said it would. Because of disagreement on the matter, Zollinger suggested Allison modify the requirements of the petition.

#### Tab 23. Section 8. Disposition of unclaimed assets

Richardson moved approval. The motion was seconded by Zollinger and carried.

#### Section 9. Order in which assets appropriated; abatement

Richardson commented that Section 9 appeared to conflict with the abatement provisions in the draft of the election against the will by the spouse. This is Tab 11. He felt

Section 6 of Tab 11 was preferable to Section 9.

Section 10. Contributions

Richardson said he didn't believe the wording "legatee or devisee" was proper and conflicted with the provisions of Section 10.

There was some feeling that Section 10 duplicated Section 9. Mapp pointed out that the whole thing went far beyond what was contemplated in the drafting of the Uniform Probate Code, Section 3-602, page III-77.

Section 11. Retainer

Dickson suggested to the committees the elimination of the wording "statute of limitations and the discharge of the bankruptcy." Zollinger pointed out this was similar to existing law. He also felt a debtor, who is an heir, should have every defense he would have if the action had been brought against him. Richardson mentioned that his experience has been that provision will usually be made right in the will if it is to be taken into account in the distributive share, or if it is to be forgiven.

Zollinger moved substitution of Section 3-603 for Section 11. The motion was seconded by Mapp and carried with Richardson voting No.

APPENDIX A

(Minutes, Probate Advisory Committee Meeting, December 15,16, 1967)

(This draft does not show the changes made at the meeting.)

Suggested changes in current drafts pursuant to meeting with  
title insurance representatives

It is suggested that in Section 8 of the 3rd draft of INITIATION OF PROBATE there be added another sentence (d) to subsection (2) as follows:

(d) The anticipated sales of property of the estate.

\* \* \* \* \*

It is suggested that Section 2 of the amended 3rd draft of TITLE AND POSSESSION OF PROPERTY be revised as follows:

Section 2. Devolution of estate at death; title to property.

(1) Upon the death of a decedent title to his property vests: in the absence of testamentary disposition, in his heirs, subject to family allowance, rights of creditors, administration, and to being sold by the personal representative: or in the persons to whom it is devised by his will, subject to family allowance, rights of creditors, right of the surviving spouse to elect against the will, administration, and to being sold by the personal representative.

(2) The power of a person to leave property by will, and the rights of creditors, devisees, and heirs to his property, are subject to the restrictions and limitations expressed or implicit in this Code to facilitate the prompt settlement of estates.

\* \* \* \* \*

It is suggested that to the first sentence of Section 6 there be added words "except as provided herein".

\* \* \* \* \*

It is suggested that Section 17 be amended to read as follows:

Section 17. Power of personal representative to sell, mortgage, lease and deal generally with property. (1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate to pay claims, family allowance, elective share of surviving spouse and administration expenses, or for purpose of distribution, without notice, hearing or court order, subject to the following:

(a) If the property is specially devised or its sale would be in contravention of a provision of the will, unless the will shall otherwise specifically provide it may not be sold except upon citation to interested devisees, hearing, and order of the court.

(b) If the inventory shows that the true cash value of the property to be sold is more than \$2,500 the amount of the bond shall be increased prior to the sale by the amount of cash to be realized on the sale, unless the court shall find that the amount of the bond previously given is adequate.

(2) The rights and title of any purchaser, mortgagee, lessee or other person dealing with the personal representative are in no way affected by any procedural irregularity or

jurisdictional defect in the administration of the estate.

\* \* \* \* \*

It is suggested that Section 19 be revised as follows:

Section 19. Title conveyed free of claims of creditors.

Property sold, mortgaged or leased by a personal representative shall be subject to liens and encumbrances of record against the decedent or his estate but shall not be subject to rights of creditors of the decedent or liens or encumbrances of record against his heirs or devisees.