

2011 UPDATE TO BOOK-PROBATE IN CALIFORNIA

The following is an update of the changes in probate law in California since the publication of the 5th edition of this book in 2007. The explanation below does not list all of the changes, many of which are very technical, but only covers those which are important to someone handling a probate matter in California.

Page 9 The Domestic Partners Act referred to in this book is still in force. California courts have allowed same-sex marriage, but it was abolished by a voter initiative. The federal courts are still wrestling with the constitutionality of this initiative, but the case will likely go to the U. S. Supreme Court before it is completely decided.

Page 59 The courts, along with all state agencies, have been hit by significant financial cutbacks. All courts in California were closed on the third Wednesday of the month through the summer of 2010. It is likely further cuts and possible court closings may occur.

Page 61 Court filing fees have changed. The fees listed in the text were cancelled by a legal opinion that charging an estate a filing fee based on the value of the estate was a disguised estate tax and unconstitutional. The current filing fee is \$355 (with some additional charges in various counties). However, this fee is applied every time a separate petition is filed with the court. Since every probate will have a petition for appointment of a personal representative and a petition to conclude and distribute the estate, there will be at least two petitions filed, and two separate fees. Every time a separate petition is filed with the court, this fee will apply.

The court certification costs are now \$25 per document plus \$1 per page for every page of the document. If, after a client is appointed as executor, you need 10 certified copies of "Letters," the cost will be \$26 each, or \$260 total.

Page 93 Effective July 1, 2008, another duty was added to the list of responsibilities for the personal representative handling an estate. Under Probate Code section 9202 a specially worded notice has to be mailed to the Franchise Tax Board within 90 days of appointment. The notice must list information on the decedent and the probate, and it is recommended that there be attached to the letter a copy of the death certificate and Letters issued by the court. Notice is to be mailed to Franchise Tax Board, P. O. Box 2952, MS A-454, Sacramento, Ca 95812-9974.

Page 161 The tax identification number request (IRS form SS-4) can now be completed and filed online at the IRS website.

Page 163 The amount that can be given away without the requirement of filing a gift tax return has been increased from \$12,000 per year per recipient to \$13,000 each.

Page 165 The federal estate tax structure was significantly changed in December of 2010. The exemption in 2009 was \$3,500,000 for a person who died that

year, with a tax rate on the “net” assets (after deductions and amounts going to a spouse and/or charities) of 45% on the excess. Congress, when it initially passed legislation increasing the estate tax exemption, in approximately 2001, provided that if the law was not changed, the federal estate tax would disappear in 2010 and come back with a \$1,000,000 exemption and a tax rate up to 55% in 2011.

Congress failed to act and for individuals dying in 2010, there was no estate tax regardless of the size of their estate. In December, 2010, Congress passed legislation which increased the estate tax exemption for persons dying in 2011 and 2012 to \$5,000,000, with a flat estate tax rate of 35% for the value of assets over and above this exemption.

This estate tax will terminate for decedents dying after December 31, 2012. Congress will then need to act to extend the estate tax law beyond that date.

The current law also provides that if a married person dies with less than \$5,000,000 in 2011 or 2012, the unused portion of that person’s exemption (\$5,000,000 less the value of decedent’s assets) carries over to that person’s surviving spouse. That surviving spouse would then have a \$5,000,000 exemption plus the amount carried over when the first spouse died.

Page 255 The costs basis of someone’s assets gets a new cost basis valuation at death for income tax purposes. This applies to individuals who died prior to 2010 and in years 2011 and 2012. It does not apply to individuals who died in 2010.

For persons who died in 2010 their assets will not get a new income tax basis, but their estate can increase the basis for assets as follows. A decedent gets a \$1,300,000 amount which can be used to increase the basis for his and her assets. In addition, if the decedent was married, another \$3,000,000 can be used to increase the basis for assets passing to the surviving spouse.

The new tax law also provides that anyone dying in 2010 can use the 2011 tax changes if desired. This means that if someone died in 2010 but his or her assets were less than \$5,000,000 he or she would get a stepped-up basis for all of the assets at death and not have to pay any estate tax.

Milton Berry Scott
January 18, 2011