

## PUBLICATION UPDATE

Route to: ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_ ☐ \_\_\_\_\_  
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# California Probate Practice

Publication 15

Release 50

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## HIGHLIGHTS

### Revised in this Release 50

- The following content has been updated in this Release 50:

#### Chapter 10:

In *Algo-Heyres v Oxnard Manor LP* (2023) 88 Cal.App.5th 1064, 1070, the Court of Appeal found that an arbitration agreement was not valid and enforceable against successors-in-interest to a decedent who lacked capacity to consent when he executed the contract. A skilled nursing facility sought to enforce an arbitration contract when successors-in-interest to the deceased resident brought an action for wrongful death and elder abuse. The trial court found that the resident lacked capacity to consent to arbitration based on medical records and denied the facility's petition to compel arbitration. The Court of Appeal found that although

there is a presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions, it is rebuttable, and mental capacity is a fact specific inquiry. Substantial evidence established lack of capacity when the patient was unable to recognize his spouse and granddaughter, failed to respond to questions about his care, unable to understand speech, and able to respond to only simple questions or commands. Additionally, the agreement was a relatively complex five-page contract that included waiving the constitutional right to a jury trial. Because substantial evidence supported the conclusion that the resident lacked capacity, the facility failed to meet its burden to establish a valid arbitration agreement.

#### Chapter 23:

In *Wehsener v. Jernigan* (2022) 86 Cal.App.5th 1311, 1324, the Court of Appeal found that the Uniform Par-

entage Act provides that a man will be presumed to be the natural father of a child if he receives the child into his home and openly holds the child out as his natural child. This presumption affects the burden of proof and may be rebutted in an appropriate action only by clear and convincing evidence. This presumption cannot be rebutted by public policy alone.

Under Family Code § 7540, a parent-child relationship will be conclusively presumed between a child and a man if the spouses cohabitated at the time of conception and birth—the child is conclusively presumed to be a child of the marriage. In *Estate of Franco* (2023) 87 Cal.App.5th 1270, the Court of Appeal found that this presumption applies only where spouses were cohabitating at the times of conception and birth of the child. The court must make the requisite finding that the mother was cohabitating with her husband at the relevant times. However, a child of a marriage under the Family Code section 7540 marital presumption is barred from providing a parent-child relationship existed with a deceased third person for purposes of inheritance under intestate succession.

In *Estate of Martino* (October 18, 2023) D080846, the Court of Appeal held that Probate Code section 6454, which provides a pathway for intestate succession by stepchildren and foster children does not foreclose other available statutory methods for a stepchild to establish a right to intestate succession, for example Probate Code section 6453.

In *Estate of Chambers* (2009) 175 Cal.App.4th 891, 895, the Court of Appeal found that Probate Code section 6453 describes how a child may show whether someone is a natural parent for the purposes of intestate succession. In *Estate of Martino* (October 18, 2023) D080846, the Court of appeal clarified that Section 6453 sets forth two different pathways to natural parentage. First, section 6453(a), incorporates the Uniform Parentage Act, and under Family Code section 7611(d), a man may attain the status of presumed father if he receives the child into his home and openly holds out the child out as his natural child. This section does not depend on biological connections. Nor is there any durational requirement for how long a parent receives the child into their home. Second, section 6453(b) applies only if a natural parent child relationship is established under some provision of the UPA other than the presumed parentage provisions. These sections are separate from section 6454, which is a separate provision allowing intestate succession from a step-parent or foster parent. Section 6454 does not state that it is the exclusive method for a stepchild to estate intestate succession.

In *Breathe Southern California v. American Lung Assn* (2023) 88 Cal.App.5th 1172, the Court of Appeal held that when the distributive provisions of an instrument are unclear, and there is no extrinsic evidence for a court to consider regarding the testator's intent, a court may exercise its own independent judg-

ment in interpreting a bequest. *Breathe Southern California* involved a dispute over whether donors who bequeathed assets to the local affiliate of a national organization intended that those assets would be shared with the national organization was a matter of donor intent. The language of the bequests restricting sharing with the national organization because one bequest made clear that the testator intended the funds to be used entirely at the affiliate and the other bequests indicated the testators intended the income to create a singular fund.

#### Chapter 30:

In *Algo-Heyres v. Oxnar Manor LP* (2023) 88 Cal.App.5th 1064, the Court Appeal found that in the context of an arbitration contract, although there is a presumption affecting the burden of proof that all persons have the capacity to make decisions and to be responsible for their acts or decisions, it is rebuttable, and mental capacity is a fact specific inquiry. Substantial evidence established lack of capacity when the patient was unable to recognize his spouse and granddaughter, failed to respond to questions about his care, unable to understand speech, and able to respond to only simple questions or commands. Additionally, the agreement was a relatively complex five-page contract that included waiving the constitutional right to a jury trial.

In *Breathe Southern California v. American Lung Assn* (2023) 88 Cal.App.5th 1172, the Court of Ap-

peal found that when the terms of an instrument are unclear, and there is no extrinsic evidence for a court to consider regarding the testator's intent, a court may exercise its own independent judgment in interpreting the language.

In *Estate of Berger* (2023) 91 Cal.App.5th 1293, the Court of Appeal explained the application of Probate Code Section 6110(c)(2). In applying this exception to the two-witness requirement, the probate court's task is to examine whether the drafter must have intended by the particular instrument to make a disposition of her property to take effect upon her death. In assessing whether an instrument was intended to be testamentary, the probate court is to look to: 1) the words in the instrument itself; and 2) the circumstances surrounding its creation and execution. When it comes to the words used, no particular words are necessary to show a testamentary intent, but words referring to the drafter's potential death tend to indicate such an intent. When it comes to the surrounding circumstances, court may examine, among other things: 1) whether the document was drafted at a time when death was near (or nearer than usual) or whether other extreme circumstances exist, as persons drafting documents at such times are more likely to be acting with testamentary intent; and 2) whether the drafter had retained the document, as persons are more likely to retain documents that were meant to have lasting effect. Extrinsic evidence is always admissible for the

purpose of proving the circumstances under which a will was executed. The principle that courts cannot resort to extrinsic evidence in interpreting the meaning of a document, including a will, when the document's terms are unambiguous does not apply here.

This is because the probate court's task here is not to assess the meaning of the words in a document, but instead to assess the meaning of the document itself—whether that document was intended to be a will.

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