

#L-810

8/4/83

Memorandum 83-59

Subject: Study L-810 - Independent Administration of Decedent's Estates

Attached is a draft of a recommendation that effectuates the Commission's decisions concerning independent administration of a decedent's estate. We have sent this draft out for review and comment. At the September meeting, we will review the draft and any comments that we have received.

Respectfully submitted,

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Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSIONTENTATIVE RECOMMENDATIONrelating to

INDEPENDENT ADMINISTRATION OF DECEDENT'S ESTATE

August 3, 1983

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you object to the tentative recommendation or that you believe that it needs to be revised. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN SEPTEMBER 8, 1983.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

CALIFORNIA LAW REVISION COMMISSION
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TENTATIVE RECOMMENDATION

relating to

INDEPENDENT ADMINISTRATION OF DECEDENT'S ESTATE

BACKGROUND

The Independent Administration of Estates Act,¹ enacted in 1974,² permits the court to authorize the executor or administrator to administer a decedent's estate with a minimum of supervision.³ The executor or administrator may petition the court for authority to administer the estate under the Act.⁴ The court must grant the authority unless good cause is shown why it should not be granted.⁵ If the authority is granted, many actions that otherwise would be under court supervision may be taken without court supervision.⁶ However, the executor or administrator must give prior advice of many proposed actions to affected persons;⁷ and, upon request of an affected person, the court must grant

1. Prob. Code §§ 591-591.7.
2. 1974 Cal. Stats. ch. 961.
3. The enactment was a response to public criticism of the probate process as requiring too much court involvement, too much attorneys' time, and being too complex and costly. Note, Probate Reform: California's Declaration of Independent Administration, 50 S. Cal. L. Rev. 155, 155 (1976).
4. Prob. Code § 591.1.
5. Prob. Code § 591.1. See also Prob. Code § 591.7 (revocation of authority where good cause shown). Independent administration authority may not be granted if the decedent's will provides that the decedent's estate shall not be administered under the Act. Prob. Code § 591.1.
6. Prob. Code § 591.6.
7. Prob. Code §§ 591.3-591.4. The Act requires that advice of proposed action be given to affected persons for the following actions: selling or exchanging personal property (with certain exceptions), leasing real property for more than a year, entering into any contract (other than a lease of real property) not to be performed within two years, selling, incorporating, or operating for longer than six months an unincorporated business of the decedent, commencing payment of or increasing a family allowance or paying a family allowance for more than 12 months after the death of the decedent, investing funds of the estate (with certain exceptions), completing a contract of the decedent to convey real or personal property, borrowing money, executing a mortgage or deed of trust or giving other security, and determining specified claims to real or personal property. Prob. Code § 591.3.

without a hearing an order restraining the executor or administrator from taking the proposed action without court supervision.⁸

The Independent Administration of Estates Act is highly regarded by probate judges, referees, and practitioners. It has significantly streamlined the probate process. Most petitions for commencement of probate request authority to administer the estate under the Act. Nevertheless, the experience under the Act indicates that the Act can be improved. The needed improvements are discussed below.

PROCEDURE FOR OBJECTING TO PROPOSED ACTION

When the executor or administrator gives an advice of proposed action, the advice must state a date--not earlier than 15 days after delivery or mailing of the advice--on or after which the proposed action is to be taken.⁹ This does not allow adequate time for the recipient of the advice to consult an attorney and for the attorney to obtain an order restraining the executor or administrator from taking the proposed action without court supervision. Moreover, the requirement that a restraining order be obtained places a significant financial burden on the recipient of the advice who ordinarily must retain an attorney to secure the order.

The Commission recommends that a less expensive and more expeditious method be provided for objecting to a proposed action. The recipient of the advice of proposed action should be permitted to object by merely delivering or mailing a written objection to the executor or administrator. If an objection is received, the executor or administrator who desires to proceed with the proposed action would be required to obtain court approval before taking the proposed action. This procedure would be an alternative to the existing procedure which requires that the person objecting obtain a court order restraining the executor or administrator from taking the proposed action without court supervision.

EFFECT OF FAILURE TO OBJECT TO PROPOSED ACTION

A person who receives an advice of proposed action has no duty to object to the proposed action. A recipient who fails to object before the action is taken may still have a court later review the action.¹⁰

8. Prob. Code § 591.5.

9. Prob. Code § 591.4.

10. Prob. Code § 591.4; 7 B. Witkin, Summary of California Law Wills and Probate § 443G, at 227 (Supp. 1982).

This is a serious defect in the Independent Administration of Estates Act. The executor or administrator who takes an action under the Act after advice of proposed action to the affected persons runs the risk that one of those persons may later challenge the action even though the person did not object before the action was taken.

The Commission recommends that persons given an advice of proposed action be required to object to the proposed action within the time allowed and that failure to object constitute a waiver of the right to have the court later review the action taken. This change would not, however, limit the power of the court to review actions of the executor or administrator on its own motion or on the motion of any interested person who was not given an advice of proposed action. The recommended provision will protect the executor or administrator where a person who receives the advice of proposed action does nothing before the action is taken and then seeks to have the court review the action after it is taken. In addition, it will encourage those given an advice of proposed action to object promptly so that the executor or administrator may abandon the proposed action in view of the objection or may obtain court approval before the action is taken.

REAL PROPERTY TRANSACTIONS

The court is not authorized to grant independent administration with respect to the sale or exchange of real property or the granting of options to purchase real property.¹¹ The lack of this authority means that the persons interested in the estate have no alternative but to follow the cumbersome, expensive, and time-consuming court-supervised procedures required by the Probate Code.¹² The Commission recommends that the independent administration procedures be extended to sales and exchanges of real property and to grants of options to purchase real property. This will give the persons interested in the estate the opportunity to handle these matters in an economical and efficient way. Instead of following the complex and expensive court-supervised procedures, the executor or administrator would give an advice of proposed action to

11. See Prob. Code § 591.2.

12. Prob. Code §§ 750-764, 780-793. See Shepherd, Real Estate Sales in Probate--Suggested Reform in Procedure, 15 Cal. St. B.J. 65, 66 (1940). A court appearance with respect to estate property is an "extraordinary" service. See Prob. Code § 902. Attorneys for executors and administrators are allowed extra compensation for extraordinary services. Prob. Code § 910.

the affected persons. Any of these persons could object and require that the transaction proceed only under court supervision. This scheme will maintain the protective features of court supervision in those cases where any affected person desires such protection but will not impose court supervision in cases where all the affected persons are in agreement on the proposed method of handling the matter.

RECOMMENDED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 591.2, 591.3, 591.4, and 591.5 of the Probate Code, relating to administration of estates.

The people of the State of California do enact as follows:

404/332

Probate Code § 591.2 (amended). When court supervision required

SECTION 1. Section 591.2 of the Probate Code is amended to read:

591.2. (a) Upon obtaining authority to administer the estate under this article, the executor or administrator shall proceed to administer the estate in the same manner as provided in this code with respect to executors or administrators who have not been granted such authority. However, ~~he shall~~ the executor or administrator is not be required to obtain judicial authorization, approval, confirmation, or instructions, which shall be known and referred to in this article as "court supervision", with respect to any actions during the course of the administration of the estate, except that ~~he shall be~~ the executor or administrator is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

~~(a) Sale or exchange of real property whether sold individually or as a unit with personal property.~~

~~(b) (1) Allowance of executor's and administrator's commissions and attorney's fees.~~

~~(c) (2) Settlement of accountings.~~

~~(d) (3) Preliminary and final distributions and discharge.~~

~~(e) Granting options to purchase real property.~~

(b) Nevertheless Notwithstanding subdivision (a), the executor or administrator may obtain court supervision as provided in this code of any action taken by him or her during the administration of the estate.

All publications of notice required by this code shall continue to be given except, when no hearing is required because the executor or administrator does not seek court supervision of an action or proposed action, no publication of the notice of hearing ~~shall be~~ is required.

Comment. Section 591.2 is amended to delete the requirement of court supervision of sales or exchanges of real property or granting options to purchase real property.

404/333

Probate Code § 591.3 (amended). Advice of proposed action

SEC. 2. Section 591.3 of the Probate Code is amended to read:

591.3. (a) Prior to the consummation of any of the actions described in ~~this section~~ subdivision (b) without court supervision, the executor or administrator to whom authority has been granted to act without court supervision shall advise the persons affected by the proposed action of his or her intention to take such action. The advice, known and referred to in this article as "advice of proposed action," shall be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to persons who have filed a request for special notice pursuant to Section 1202.

(b) The actions requiring such advice are all of the following:

(1) Selling or exchanging real property.

(2) Granting options to purchase real property.

~~(a)~~ (3) Selling or exchanging personal property, except for securities sold upon an established stock or bond exchange and other assets referred to in Sections 770 and 771.5 when sold for cash.

~~(b)~~ (4) Leasing real property for a term in excess of one year.

~~(c)~~ (5) Entering into any contract, other than a lease of real property, not to be performed within two years.

~~(d)~~ (6) Continuing for a period of more than six months from the date of appointment of the executor or administrator of an unincorporated business or venture in which the decedent was engaged or which was wholly or partly owned by the decedent at the time of his or her death, or the sale or incorporation of such business.

~~(e)~~ (7) The first payment, the first payment for a period commencing 12 months after the death of the decedent, and any increase in the payments of, a family allowance.

~~(f)~~ (8) Investing funds of the estate, except depositing funds in banks and investing in insured savings and loan association accounts, in units of a common trust fund described in Section 585.1, in direct obligations of the United States maturing not later than one year from the date of investment or reinvestment, and in mutual funds which are comprised of ~~(i)~~ (i) those obligations, or ~~(2)~~ (ii) repurchase agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

~~(g)~~ (9) Completing a contract entered into by the decedent to convey real or personal property.

~~(h)~~ (10) Borrowing money or executing a mortgage or deed of trust or giving other security.

~~(i)~~ (11) Determining third-party claims to real and personal property if the decedent died in possession of, or holding title to, such property, or determining decedent's claim to real or personal property title to or possession of which is held by another.

Comment. Section 591.3 is amended to require advice of proposed action in the case of sales or exchanges of real property and granting options to purchase real property in view of the amendment to Section 591.2 so that court authorization or approval of those actions is no longer required in every case.

405/466

Probate Code § 591.4 (amended). Notice of advice of proposed action

SEC. 3. Section 591.4 of the Probate Code is amended to read:

591.4. The advice of proposed action shall be delivered personally or sent by first-class mail, or sent by airmail to any person residing outside the jurisdiction of the United States, to each person described in Section 591.3 at his or her last known address. The advice of proposed action shall state the name and mailing address of the executor or administrator and the action proposed to be taken, with a ~~reasonable~~ reasonably specific description of such action, and the date on or after which the proposed action is to be taken. Such date shall not be less than 15 days after the personal delivery, or mailing, of the advice. The failure of the executor or administrator to comply with the provisions

of this section shall not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers and to third persons dealing in good faith with ~~him~~ the executor or administrator who changed their position in reliance on the action, conveyance or transfer without actual notice of the failure of the executor or administrator to comply with such provisions. ~~The receipt of such advice shall not prejudice the right of any person interested in the estate to have the court later review the action taken.~~ No person dealing with the executor or administrator shall have any duty to inquire or investigate whether or not the executor or administrator has complied with the provisions of this section.

Comment. Section 591.4 is amended to make the following changes:

(1) The requirement of "actual" notice to transferees and others is added to the fourth sentence to conform Section 591.4 to Section 591.5.

(2) The last sentence which permitted persons given an advice of proposed action to have later court review of the action taken is deleted. Section 591.5 is amended to require objections to be made as provided in that section and to preclude a person given an advice of proposed action from obtaining later court review.

(3) The new last sentence (no duty to inquire or investigate) is added for consistency with the last sentence of Section 591.5(c).

405/471

Probate Code § 591.5 (amended). Objection to proposed action

SEC. 4. Section 591.5 of the Probate Code is amended to read:

591.5. (a) Any person described in Section 591.3 who objects to the taking of any proposed action described in Section 591.3 without court supervision, may do either or both of the following:

(1) The person may apply to the court having jurisdiction over the proceeding for an order restraining the executor or administrator from taking the proposed action without court supervision, which order the court shall grant without requiring notice to the executor or administrator and without cause being shown therefor. Such order may be served by the person so objecting upon the executor or administrator in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in such manner as may be authorized by the court.

(2) The person may deliver or mail a written objection directly to the executor or administrator, or to the attorney for the executor or administrator, so that the objection is received before the date specified

on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is later.

(b) If the executor or administrator has notice of the issuance of the restraining order he or of the written objection of a person described in Section 591.3, the executor or administrator shall, if he or she desires to consummate such action, submit it to the court for approval following the provisions of this code dealing with the court supervision of such action and may consummate such action under such order as may be entered by the court.

(c) The failure of the executor or administrator to comply with such restraining order subdivision (b) and the consummation of the action by the executor or administrator ~~in violation of such order~~ without complying with subdivision (b) shall not affect the validity of the action so taken, or the title to any property conveyed or transferred to bona fide purchasers and to third persons dealing in good faith with ~~him~~ the executor or administrator who changed their position in reliance on the action, conveyance, or transfer without actual notice of the failure of the executor or administrator to comply with ~~such order~~ subdivision (b). No person dealing with the executor or administrator shall have any duty to inquire or investigate whether or not ~~a restraining order has been issued~~ the executor or administrator has complied with subdivision (b).

(d) All persons described in Section 591.3 who have been given an advice of proposed action as provided in Section 591.4 may object only in the manner provided in this section and the failure to so object is a waiver of any right to have the court later review the action taken. The court may, however, review actions of the executor or administrator on its own motion or on motion of an interested person who was not given an advice of proposed action.

Comment. Section 591.5 is amended to permit a person who objects to the action proposed by the executor or administrator to make objection directly to the executor or administrator, and to add subdivision (d) to make the advice of proposed action binding on those to whom it is given.

Transitional provision

SEC. 5. (a) Except as provided in subdivision (b), the amendments made by this act to Sections 591.2, 591.3, 591.4, and 591.5 of the Probate Code do not apply if the executor or administrator was granted authority prior to the operative date of this act to administer the estate under The Independent Administration of Estates Act.

(b) An executor or administrator who was granted authority prior to the operative date of this act to administer the estate under The Independent Administration of Estates Act may file a petition under Section 591.1 of the Probate Code after the operative date of this act. If the petition is granted, the provisions of The Independent Administration of Estates Act as amended by this act apply.

Comment. Section 5 makes clear that the amendments made by this act do not automatically apply where independent administration authority was granted prior to the operative date of this act. This is to protect an affected person who would have objected to the granting of independent administration authority if it had been petitioned for under The Independent Administration Estates Act as amended by this act. Subdivision (b) permits the executor or administrator to petition for independent administration authority after the operative date of this act, even though independent administration authority was granted prior to the operative date. If the petition is granted, the amendments made by this act apply, including but not limited to the new provisions giving expanded independent administration authority and providing that an objection to a proposed action is waived if not timely made.