

Memorandum 85-13

Subject: Study L-1020 - Probate Code (Powers and Duties of Executors and Administrators)

Attached is a staff draft of new Probate Code provisions concerning powers and duties of personal representatives. The provisions on sales (existing Sections 750-814) are not included in this draft, but will be included in a later draft. The staff draft is organized as follows:

- (1) General provisions needed in connection with the powers and duties provisions.
- (2) The draft of proposed Chapter 3 (powers and duties) of Part 3 of Division 7 of the new Probate Code.
- (3) Conforming revisions to other parts of the Probate Code and other codes.
- (4) Comments to the existing sections to be repealed, showing the disposition of existing provisions.

The staff draft presents the following policy questions:

§ 7551. Possession of decedent's estate

Section 7551 provides that heirs or devisees "may" maintain certain actions, but omits the language of existing Section 581 that "they are not required to do so." The omitted language appears redundant in view of the word "may." Does this omission cause a problem?

§ 7559. Option to purchase given in will

Section 7559 requires that the court may authorize the personal representative to convey property to a person given an option to purchase the property only if the court finds that the California estate tax has been paid or the State Controller has consented to the transfer. This requirement is drawn from prior law which required that the state inheritance tax be paid. Should this requirement of Section 7559 be omitted?

§ 7560. Joint personal representatives

Subdivision (b) of Section 7560 permits one personal representative to act while his or her co-executor or co-administrator is absent from the state or legally disqualified from serving. No court order is required. However, under guardianship-conservatorship law, a court order is required to authorize one of two guardians or conservators to

act while the other is absent or disqualified. Prob. Code § 2105(d).
Should a court order be required in a probate proceeding?

§ 7561. Petition for instructions

Existing Section 588 permits a petition for instructions only when "no other or different procedure is provided by statute." This limitation is omitted from Section 7561, consistent with the guardianship-conservatorship statute. Prob. Code § 2403. Is this good policy?

§ 7620. Petition for order

Sections 7620-7628 generally continue existing Sections 850-853 (conveyance or transfer of property claimed to belong to decedent or other person). Section 7620 permits the petition to be filed by the personal representative or any claimant. This is consistent with existing Sections 850 and 851. Commissioner Stodden has suggested that this be expanded to allow a petition by any beneficiary of the estate if the personal representative fails to petition. Is this expansion desirable?

§ 7651. Petition; notice

Section 7651 continues the requirement of publication of notice contained in existing Section 841. Is publication desirable in this context?

§ 7663. Investment of surplus money as provided in will

Subdivision (d) of Section 7663 omits the language of existing Section 584.6 that "[a]t the time appointed, the court shall hear the petition if no objection thereto has been filed by any interested party." Read literally, this language appears to permit an objector to prevent the court from hearing the petition. If so, this seems absurd. Is there any reason to continue this language?

Respectfully submitted,

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CONFORMING REVISIONS

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DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 3. RULES OF PROCEDURE

§ 7142. Clerk to set matters for hearing

7142. When a petition, report, or account which requires a hearing is filed with the clerk of the court pursuant to this division, the clerk shall set the matter for hearing.

Comment. Section 7142 continues provisions that were scattered throughout former Division 3. See, e.g., former Sections 327, 441, 578, 578a, 584, 584.2, 584.3, 584.5, 591.1, 591.7, 605, 643, 653, 662, 718.5, 755, 758, 771, 771.3, 773, 810, 831, 841, 851, 851.5, 854, 1000, 1004, 1041, 1068, 1102, 1120, 1120.1a, 1123.5, 1125.1, 1129, 1138.6, 1139.3, 1139.15, 1172, 1191, 1200, 1355. Cf. Section 1451 (guardianship-conservatorship).

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CHAPTER 4. NOTICES

§ 7158. Proof of giving of notice

7158. (a) Proof of the giving of notice under this division shall be made at or before the hearing to the satisfaction of the court. Such proof may be made by, but is not limited to, the following means:

(1) Proof of notice by personal delivery may be made by the affidavit of the person making such delivery showing the time and place of delivery and the name of the person to whom delivery was made.

(2) Proof of mailing may be made in the manner prescribed in Section 1013a of the Code of Civil Procedure.

(3) Proof of posting may be made by the affidavit of the person who posted the notice.

(4) Proof of publication may be made by the affidavit of the publisher or printer, or the foreman or principal clerk of the publisher or printer, showing the time and place of publication.

(b) If it appears to the satisfaction of the court that notice has been regularly given or that a party entitled to notice has waived it, the court shall so find in its order, and the order is conclusive on all persons when it becomes final.

Comment. Section 7158 is drawn from Section 1468 (guardianship-conservatorship law) and continues the substance of subdivision (c) of former Section 1200.5.

Subdivision (a) of Section 7158 makes clear that proof of notice may be made at or before the hearing, and specifies the manner of proof. Paragraph (1) is adapted from subdivision (a) of Section 417.10 of the Code of Civil Procedure. Paragraph (2) continues existing practice. See Dorsey, Notice and Procedure, in 1 California Decedent Estate Administration § 20.14, at 786-89 (Cal. Cont. Ed. Bar 1971). Paragraph (3) also continues existing practice. See id., § 20.12, at 785-86. Paragraph (4) is adapted from subdivision (b) of Section 417.10 of the Code of Civil Procedure. A declaration may be used in lieu of an affidavit required by Section 7158. See Code Civ. Proc. § 2015.5. See also Code Civ. Proc. § 2015.6 (affirmation in lieu of oath).

Subdivision (b) is the same as a portion of subdivision (c) of former Section 1200.5. The provision in subdivision (b) for waiver of notice is drawn from case law. See Estate of Poder, 274 Cal. App.2d 786, 791-92, 79 Cal. Rptr. 484 (1969); Estate of Pailhe, 114 Cal. App.2d 658, 662, 251 P.2d 76 (1952); Estate of Palm, 68 Cal. App.2d 204, 213-14, 156 P.2d 62 (1945); In re Estate of Pierce, 28 Cal. App.2d 8, 11-12, 81 P.2d 1037 (1938). If notice is jurisdictional, it may not be waived. Estate of Joslyn, 256 Cal. App.2d 671, 674-76, 64 Cal. Rptr. 386 (1967).

The rule of conclusiveness stated in subdivision (b) is subject to case law exceptions. See, e.g., State v. Broderon, 247 Cal. App.2d 797, 56 Cal. Rptr. 58 (1967) (finality of decree not protected by notice given because of presence of extrinsic fraud). See also Estate of Clarke, 66 Cal.2d 142, 424 P.2d 337, 56 Cal. Rptr. 897 (1967); Estate of Reed, 259 Cal. App.2d 14, 66 Cal. Rptr. 193 (1968).

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PART 3. ADMINISTRATION PROCEEDINGS

CHAPTER 1. GENERAL PROVISIONS

§ 7511. Transfer or conveyance of property pursuant to court order

7511. (a) Whenever the court authorizes or directs a conveyance or lease of real property of the estate, the creation of a mortgage or deed of trust on real property of the estate, a transfer of personal property of the estate, or the creation of a security interest or other lien in personal property of the estate, the transaction shall be carried out by the personal representative in accordance with the terms of the order.

(b) A conveyance, lease, or mortgage of, or deed of trust on, real property executed by a personal representative shall set forth therein that it is made by authority of the order authorizing or directing the transaction and shall give the date of the order. A certified copy of the order shall be recorded in the office of the county recorder in each county in which any portion of the real property is located.

(c) A transaction described in this section carried out by a personal representative in accordance with an order authorizing or directing the transaction has the same effect as if the decedent were living at the time of the transaction and had carried it out himself or herself.

Comment. Subdivisions (a) and (b) of Section 7511 continue portions of former Sections 786 (sales of real property), 833 (mortgages), and 843 (leases). Subdivision (c) continues portions of Section 786 (sales of real property), 834 (mortgages, pledges, deeds of trust), 843 (leases), and 853 (conveyance to complete contract or to satisfy adverse claim). See also Section 59 ("personal representative" defined), [Comment to Section 2111 concerning after-acquired title].

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CHAPTER 3. POWERS AND DUTIES OF PERSONAL REPRESENTATIVES

Article 1. General Provisions

§ 7550. Duty to manage estate using ordinary care and diligence

7550. (a) The personal representative has the management and control of the estate and, in managing and controlling the estate, shall use ordinary care and diligence. What constitutes ordinary care and diligence is determined by all the circumstances of the particular estate.

(b) The personal representative shall exercise a power to the extent that ordinary care and diligence requires that the power be exercised, and shall not exercise a power to the extent that ordinary care and diligence requires that the power not be exercised.

Comment. Section 7550 is the same in substance as Section 2401 (guardianship-conservatorship law) and is consistent with prior law. See, e.g., Estate of Beach, 15 Cal.3d 623, 631, 542 P.2d 994, 125 Cal. Rptr. 570 (1975) (executor required to exercise "that degree of prudence and diligence which a man of ordinary judgment would be expected to bestow upon his own affairs of a like nature"); Lobro v. Watson, 42 Cal. App.3d 180, 189, 116 Cal. Rptr. 533 (1974) (administratrix "required to exercise the degree of care and prudence that an ordinary person would employ in handling his or her own affairs"). The standard stated in subdivision (a) of Section 7550 is consistent with trust principles but recognizes specifically that what is ordinary care and diligence varies with the circumstances of each case. See Civil Code § 2259 (trustee "must use at least ordinary care and diligence"). In determining what constitutes ordinary care and diligence, a professional personal representative will be held to a greater standard of care based on its presumed expertise than a lay personal representative. Estate of Beach, supra at 635. The term "personal representative" is defined in Section 59.

§ 7551. Possession of decedent's estate

7551. (a) Subject to subdivisions (c) and (d), the personal representative:

(1) Shall take into possession all the estate of the decedent, and shall collect all debts due to the decedent or the estate.

(2) Is entitled to receive the rents, issues, and profits from the real and personal property in the estate until the estate is settled or delivered over by order of court to the heirs or devisees.

(b) With respect to property under his or her control, the personal representative shall:

(1) Pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the property.

(2) Keep in good tenable repair all houses, buildings, and fixtures on the property.

(c) Before the time to file or present claims has expired, any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the personal representative, possession of the property by him or her will be necessary for purposes of administration. The request by a personal representative for delivery of any property possessed by an heir or devisee is conclusive evidence, in any action against the heir or devisee for possession thereof, that the possession of the property by the personal representative is necessary for purposes of administration.

(d) After the time to file or present claims has expired, the personal representative is not entitled to recover possession of property from an heir who has succeeded to the property, from a devisee to whom the property has been devised, or from the assignee of any such heir or devisee, unless the personal representative proves that recovery of the property is necessary to pay debts, devises, or expenses of administration already accrued, or is necessary to distribute to some other heir or devisee entitled to the property. The heirs or devisees may themselves, or jointly with the personal representative, maintain an action for possession of real property or to quiet title to real property against any person except the personal representative.

Comment. Paragraph (1) of subdivision (a) of Section 7551 continues the first sentence of former Section 571 and supersedes a portion of the first sentence of former Section 581. For a comparable provision in the

guardianship-conservatorship law, see Section 2451 (collection of debts and benefits). Paragraph (2) of subdivision (a) continues the last portion of the first sentence of former Section 581. See also Section [300] (estate subject to control of superior court).

Paragraph (1) of subdivision (b) is taken from Section 3-709 of the Uniform Probate Code. Paragraph (2) of subdivision (b) continues the substance of the second sentence of former Section 581.

Subdivision (c) is taken from Section 3-709 of the Uniform Probate Code.

Subdivision (d) continues the substance of the third and fourth sentences of former Section 581. The last portion of the fourth sentence of former Section 581 ("but they are not required to do so") has been omitted as unnecessary. See Section 12 ("may" is permissive). See also Sections 32 ("devise" defined), 34 ("devisee" defined), 59 ("personal representative" defined).

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§ 7552. Purchase of estate property by personal representative

7552. (a) A personal representative may purchase property of the estate only in the following circumstances:

(1) If written consent to the purchase is signed by all devisees under the decedent's will, or, if the decedent died intestate, by all the decedent's heirs, and filed with the court, and the court approves the proposed purchase.

(2) If the personal representative has been given an option to purchase real or personal property of the estate under the decedent's will and the conditions specified in Section 7559 are satisfied.

(3) If the personal representative is authorized to purchase the property under the decedent's will, or has a right to purchase property in the estate under a contract in writing made during the lifetime of the decedent and the contract is one which may be specifically enforced, and the requirements of Article 5 (commencing with Section 7620) are satisfied.

(b) The personal representative may not purchase any claim against the estate, directly or indirectly, nor be interested in any such purchase.

Comment. Section 7552 supersedes former Section 583. Paragraph (1) of subdivision (a) is new. Paragraphs (2) and (3) of subdivision (a) continue the substance of the second and third sentences of former Section 583. Subdivision (b) continues the substance of a portion of the first sentence of former Section 583. See also Section 59 ("personal representative" defined).

[Note. The provision of the first sentence of Section 583, that if the personal representative pays any claim for less than its full amount, the personal representative may have credit in the account only for the amount actually paid, should be continued in Chapter 3 (representation and payment of claims) of Title 3.]

39385

§ 7553. Duty to recover property transferred in fraud of creditors

7553. The personal representative shall, on application of any creditor of the decedent or the estate, commence and prosecute to final judgment an action for the recovery of the decedent's property for the benefit of creditors if both of the following conditions exist:

(a) The decedent during lifetime did any of the following:

(1) Conveyed any real or personal property, or any right or interest therein, with intent to defraud creditors or to avoid any obligation due another.

(2) Conveyed any real or personal property that by law is void as against creditors.

(3) Made a gift of any real or personal property in view of death.

(b) There is a deficiency of assets in the hands of the personal representative.

Comment. Section 7553 continues the substance of former Section 579. See also Section 59 ("personal representative" defined); Civil Code §§ 1149-1153 (gifts in view of death).

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§ 7554. Payment of costs and expenses; sale of property recovered

7554. (a) A creditor making application under Section 7553 shall pay such part of the cost and expenses of the suit, or give an undertaking to the personal representative for that purpose, as the court or a judge thereof shall direct.

(b) All property so recovered shall be sold for the payment of debts in the same manner as if the decedent had died seised or possessed thereof. The proceeds shall be applied to payment of the debts of the decedent in the same manner as other property in the hands of the personal representative. The remainder of the proceeds, after all the debts of the decedent have been paid, shall be paid to the person from whom the property was recovered.

Comment. Section 7554 continues the substance of former Section 580. See also Section 59 ("personal representative" defined).

§ 7555. Operation of decedent's business other than partnership

7555. After notice to all interested persons, given in such manner as may be directed by the court or a judge thereof, the court may authorize the personal representative to continue the operation of the decedent's business, other than a business operated by a partnership in which the decedent was a partner, to such an extent and subject to such restrictions as the court may determine to be for the best interests of the estate and interested persons.

Comment. Section 7555 continues a portion of the first sentence of former Section 572. See also Sections 48 ("interested person" defined), 59 ("personal representative" defined).

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§ 7556. Possession and operation of decedent's partnership

7556. (a) Unless otherwise ordered by the court pursuant to this section, when at the time of the decedent's death a partnership existed between the decedent and any other person, the surviving partner has the right to continue in possession of the partnership and to settle its business, but the interest of the decedent in the partnership shall be included in the inventory and be appraised as other property. The surviving partner shall settle the affairs of the partnership without delay, shall account to the personal representative, and shall pay over such balances as may from time to time be payable to the surviving partner for the decedent. Upon application of the personal representative, the court or a judge thereof may, whenever it appears necessary, order the surviving partner to render an account. The personal representative may maintain any action against the surviving partner which the decedent could have maintained.

(b) After notice to all interested persons, given in such manner as may be directed by the court or a judge thereof, the court may authorize the personal representative to continue as a partner in any partnership in which the decedent was a partner at the time of death, unless inconsistent with the terms of any written partnership agreement signed by all of the partners prior to the decedent's death. The personal representative shall have all the rights, powers, duties, and obligations provided in the written partnership agreement, subject to the written approval of all of the surviving partners and to such restrictions as the court may

determine to be for the best interests of the estate and of interested persons. In the absence of a written partnership agreement and subject to the written consent of the surviving partners, the personal representative shall have all the rights, powers, duties, and obligations which the court may specify. The personal representative may be authorized to act as a general partner only if the decedent was a general partner at the time of death, and as a limited partner where the decedent at the time of death was a general partner, or was a limited partner as described in Chapter 2 (commencing with Section 15501) of Title 2 of the Corporations Code.

Comment. Subdivision (a) of Section 7556 is the same in substance as the second, third, and fourth sentences of former Section 571. The language of the fourth sentence of former Section 571 that if the surviving partner neglects or refuses to render an account as ordered by the court, the court "may, after notice, compel it by attachment," has been omitted as unnecessary. If the surviving partner neglects or refuses to obey the court's order, the court may enforce the order by contempt as in other cases. See Code Civ. Proc. § 1209(a)(5).

Subdivision (b) is the same in substance as a portion of the first sentence and all of the second sentence of former Section 572. See also Sections 48 ("interested person" defined); 59 ("personal representative" defined).

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§ 7557. Delivery of real property to heirs or devisees

7557. When the time to file or present claims has expired, the personal representative shall deliver possession of the real property to the heirs or devisees, unless the income from the property for a longer period or a sale of the property is required for the payment of debts of the decedent.

Comment. Section 7557 continues former Section 582. See also Section 59 ("personal representative" defined).

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§ 7558. Voting rights with respect to corporate shares or memberships or property

7558. With respect to any shares of stock of a domestic or foreign corporation held in the estate, any membership in a nonprofit corporation held by the estate, or any other property held in the estate, a personal representative may do any or all of the following:

(a) Vote in person, and give proxies to exercise, any voting rights with respect to such shares or memberships or property.

(b) Waive notice of any meeting or give consent to the holding of any meeting.

(c) Authorize, ratify, approve, or confirm any action which could be taken by shareholders, members, or property owners.

Comment. Section 7558 continues the substance of former Section 589, except that the former requirement that authorization by a personal representative of any action which could be taken by shareholders be "in writing" is not continued. Section 7558 is drawn from and is consistent with Section 2458, the comparable section of the guardianship-conservatorship law. See also Section 59 ("personal representative" defined); Corp. Code §§ 702(a) (personal representative may vote share), 705(a) (person entitled to vote shares may give proxy).

The word "meeting" in subdivision (b) includes a meeting of shareholders, members, or property owners, but is not so limited. Subdivision (c) permits authorization of action taken at a defectively noticed meeting by approval of the minutes of the meeting if such approval satisfies the requirements of the Corporations Code or other applicable law.

65191

§ 7559. Option to purchase given in will

7559. (a) Upon petition by a person given an option to purchase real or personal property under the decedent's will, the court may make an order authorizing the personal representative to convey real or personal property upon compliance with the terms and conditions stated in the will if all of the following conditions are satisfied:

(1) The will has been duly admitted to probate.

(2) The court either finds that the rights of creditors will not be impaired, or requires a bond in an amount and with such surety as the court directs or approves.

(3) The court finds that the California estate tax imposed by Section 13302 of the Revenue and Taxation Code has been paid, or the State Controller or an authorized representative of the State Controller has consented in writing to the order.

(4) The optionee's petition is filed within six months after issuance of letters testamentary or of letters of administration with the will annexed or within any time limitation stated in the will, whichever is earlier, except that if any time limitation in the will is measured from the death of the testator, such time is extended by the period between the death and the issuance of letters, but in no event to more than six months after such issuance.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Sections 1200 and 1200.5].

Comment. Section 7559 continues the substance of former Section 854. The notice provisions of former Section 854 are expanded to require notice under Section [1200.5] as well as under Section [1200]. Reference to "an authorized representative of the State Controller" is substituted for the former reference to an "inheritance tax attorney." The former reference to inheritance taxes is replaced by the reference to the California pick-up tax under Revenue and Taxation Code Section 13302, since the California inheritance tax has been repealed. See also Section 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

67704

§ 7560. Joint personal representatives

7560. (a) When there are two or more personal representatives, the act of a majority is valid.

(b) When two or more personal representatives have been appointed and one or more are absent from the state or legally disqualified from serving, the act of the other or others is effectual for all purposes.

(c) If upon any hearing it appears that one or more of the personal representatives were absent from the state or legally disqualified from serving, the court may so find in its order or judgment [and the finding is conclusive of the authority of those acting].

Comment. Section 7560 continues the substance of former Section 570. Under subdivision (a), when there are "two or more" personal representatives, the act of a majority is valid. Under former Section 570, when there were "more than two," the act of a majority was valid. In either case, when there are two personal representatives, unanimity of action is required. See *Bullis v. Security Pac. Nat'l Bank*, 21 Cal.3d 801, 810, 582 P.2d 109, 148 Cal. Rptr. 22 (1978). For the comparable provision in guardianship-conservatorship law, see Section 2105. See also Sections 59 ("personal representative" defined), [511-512] (joint personal representatives).

[Note. Bracketed material may go into a general provision.]

67721

§ 7561. Petition for instructions

7561. (a) Upon petition of the personal representative, a creditor, or other interested person, the court may from time to time authorize and instruct the personal representative, or approve and confirm the acts of the personal representative, in the administration, management, investment, disposition, care, protection, operation, or preservation of the estate, or the incurring or payment of costs, fees, or expenses in connection therewith.

(b) Notice of the hearing on the petition shall be given by the petitioner for the period and in the manner provided by Section [1200.5].

Comment. Section 7561 supersedes former Section 588 and is the same in substance as Section 2403 (guardianship-conservatorship law). Subdivision (a) makes clear that the court may not only instruct the personal representative in advance, but may also confirm actions already taken. This is consistent with what appears to have been prior law. See Estate of Sidebotham, 138 Cal. App.2d 412, 418, 291 P.2d 965 (1956). The provision of former Section 588 that limited use of the instruction procedure to cases where no other or different procedure was provided by statute has not been continued. Such a provision was unduly rigid and, moreover, is not appropriate since Section 7561 permits approval and confirmation after the act has been taken by the personal representative. See also Section 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

69411

Article 2. Deposit of Money and Personal Property
With Financial Institutions

§ 7570. Bank and savings accounts

7570. (a) The personal representative may deposit money belonging to the estate in a bank in this state or in a trust company authorized to conduct a trust business in this state or may invest such money in an account in an insured savings and loan association or in shares of an insured credit union.

(b) The money may be withdrawn without order of court unless the money is deposited pursuant to an order under Division 1 (commencing with Section 99) of the Financial Code, or is invested pursuant to an order under Division 2 (commencing with Section 5000) of the Financial Code.

Comment. Section 7570 continues the substance of former Section 585, except that the provision discharging the personal representative from further care of or responsibility for deposited funds until withdrawn is not continued. The extent of the personal representative's care or responsibility for deposited funds is determined under Section 7550 (duty to use ordinary care and diligence). This is consistent with Section 2453 (guardianship-conservatorship law). See also the Comment to Section 2453.

Subdivision (a) expands former Section 585 by including trust companies and insured credit unions. This makes subdivision (a) coextensive with the first sentence of Section 2453 (guardianship-conservatorship law). See also Sections 21.5 ("account in an insured savings and loan association" defined), 59 ("personal representative" defined), 72 ("shares of an insured credit union" defined).

§ 7571. Deposit of personal property with trust company

7571. The personal representative may deposit personal property of the estate with a trust company, and the bond of the personal representative reduced, as provided by Division 1 (commencing with Section 99) of the Financial Code.

Comment. Section 7571 continues the substance of former Section 586. For the comparable provision in the guardianship-conservatorship law, see Section 2454. See also Section 59 ("personal representative" defined).

69423

§ 7572. Deposit of securities in securities depository

7572. (a) Securities which constitute all or part of the estate may be deposited in a securities depository as defined in Section 30004 of the Financial Code which is either licensed under Chapter 2 (commencing with Section 30200) of Division 14 of the Financial Code or is exempted from such licensing by Section 30005 or 30006 of the Financial Code.

(b) If the securities have been deposited with a trust company pursuant to Section 7571, the trust company may deposit the securities in a securities depository as provided in subdivision (a).

(c) The securities depository may hold securities deposited with it in the manner authorized by Section 775 of the Financial Code.

Comment. Subdivisions (a) and (c) of Section 7572 continue the substance of former Section 590. Subdivision (b) continues the substance of former Section 586.1. Section 7572 is consistent with Section 2455, the comparable provision in the guardianship-conservatorship law.

90852

§ 7573. Direct distribution by depository

7573. When a decree is rendered distributing money or personal assets of an estate deposited with a bank, trust company, savings and loan association, credit union, or securities depository pursuant to this article, the bank, trust company, savings and loan association, credit union, or securities depository may deliver the property directly to the distributees and shall file receipts therefor with the clerk.

Comment. Section 7573 continues the substance of former Section 586.5. The former provisions have been expanded to apply to all types of financial institutions with which money or property may be deposited pursuant to this article. Former Section 586.5 applied only to a bank or trust company.

Article 3. Actions and Proceedings by or
Against Personal Representative

§ 7580. Effect of death on causes of action

7580. (a) Except as provided in this section and subject to Section [707], no cause of action is lost by reason of the death of any person but may be maintained by or against the person's personal representative.

(b) In an action brought under this section against a personal representative, all damages may be awarded which might have been recovered against the decedent had the decedent lived, except damages awardable under Section 3294 of the Civil Code or other damages imposed primarily for the sake of example and by way of punishing the defendant.

(c) When a person having a cause of action dies before judgment, the damages recoverable by his or her personal representative are limited to such loss or damage as the decedent sustained or incurred prior to death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had he or she lived, and shall not include damages for pain, suffering, or disfigurement.

(d) This section applies where a loss or damage occurs simultaneously with or after the death of a person who would have been liable therefor if his or her death had not preceded or occurred simultaneously with the loss or damage.

(e) Nothing in this section makes assignable a cause of action which was not assignable prior to enactment of Chapter 657 of the Statutes of 1961.

Comment. Section 7580 continues the substance of former Section 573. For a comparable section in the guardianship-conservatorship law, see Section 2462. See also Section 59 ("personal representative" defined).

90862

§ 7581. Action for partition

7581. (a) When the decedent leaves an undivided interest in any property, an action for partition of the property may be commenced and maintained against the personal representative.

(b) The personal representative may commence and maintain an action against the other cotenants for partition of any property in which the decedent left an undivided interest.

Comment. Section 7581 continues the substance of former Section 575. For a comparable section in the guardianship-conservatorship law, see Section 2463. See also Section 59 ("personal representative" defined).

90867

§ 7582. Action on bond of former personal representative

7582. A personal representative as such may maintain actions on the bond of any former personal representative of the same estate, for the use and benefit of all interested persons.

Comment. Section 7582 continues the substance of former Section 576. See also Sections 48 ("interested person" defined), 59 ("personal representative" defined).

043/173

§ 7583. Dispensable parties

7583. In actions by or against personal representatives, it is not necessary to join those as parties to whom letters were ordered issued but who have not qualified.

Comment. Section 7583 continues the substance of former Section 577. See also Section 59 ("personal representative" defined).

043/174

Article 4. Compromise of Claims and Actions;
Extension, Renewal, or Modification of Obligations

§ 7600. Authority to compromise claims and actions and to extend, renew, or modify obligations

7600. If it is in the best interests of the estate, the personal representative may do any or all of the following with or without prior court approval:

(a) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate, including the giving of a covenant not to sue.

(b) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the decedent or the estate.

(c) Give a discharge to a debtor of the decedent or the estate.

Comment. Section 7600 continues the substance of the first, second, and third sentences of former Section 578 and the first and second sentences of former Section 578a, except that the language of former Section 578 that the personal representative may give a discharge if the

debtor "is unable to pay all his or her debts" is not continued. Thus it need only be shown that the action is in the best interests of the estate, whether because the debtor is insolvent, the liability is doubtful, or for some other reason. By permitting but not requiring prior court approval, Section 7600 continues prior law. See Estate of Lucas, 23 Cal.2d 454, 463-65, 144 P.2d 340 (1943); Moulton v. Holmes, 57 Cal. 337, 343-44 (1881); Estate of Coffey, 161 Cal. App.2d 259, 264, 326 P.2d 511 (1958); Taylor v. Sanson, 24 Cal. App. 515, 517-18, 141 P. 1060 (1914).

The claim or action which may be compromised under subdivision (a) includes a claim or action for wrongful death or injury of the decedent which the personal representative may enforce under any law. See, e.g., Code Civ. Proc. § 377. This continues the substance of the first and second sentences of former Section 578a.

For a comparable provision in guardianship-conservatorship law, see Section 2500. See also Section 59 ("personal representative" defined).

043/175

§ 7601. Petition for court authorization or approval; notice

7601. (a) Upon [verified] petition of the personal representative, the court may authorize or approve the action of the personal representative taken or proposed to be taken pursuant to Section 7600. The petition shall show the terms of and the advantage to the estate of the action taken or proposed to be taken, including the amount of any money proposed to be paid.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Section 1200.5].

Comment. Section 7601 continues the substance of the fourth and fifth sentences of former Section 578 and the third and fourth sentences of former Section 578a, except that the provision that the clerk shall set the petition for hearing by the court is continued in Section 7142. See also Section 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

043/185

Article 5. Conveyance or Transfer of Property Claimed
to Belong to Decedent or Other Person

§ 7620. Petition for order

7620. (a) The personal representative or any claimant may file a [verified] petition requesting that the court make an order under this article in any of the following cases:

(1) Where a person who is bound by a contract in writing to convey real property or to transfer personal property dies before making the

conveyance or transfer and the decedent, if living, might have been compelled to make the conveyance or transfer.

(2) Where a person binds himself or herself or his or her personal representative by a contract in writing to convey real property or to transfer personal property upon or after his or her death, and the contract is one which can be specifically enforced.

(3) Where the personal representative is authorized or has a right to purchase property in the estate as provided in Section 7552.

(4) Where a person dies in possession of, or holding title to, real or personal property, and the property or some interest therein is claimed to belong to another.

(5) Where a person dies having a claim to real or personal property, title to or possession of which is held by another.

(b) The petition shall set forth the facts upon which the claim is based.

Comment. The introductory clause of subdivision (a) of Section 7620 continues a portion of the first sentence of former Section 851 and a portion of the first sentence of former Section 851.5. Paragraphs (1) and (2) of subdivision (a) continue the substance of a portion of former Section 850. Paragraph (3) of subdivision (a) continues the substance of the third sentence of former Section 583. See also Section 7552. Paragraphs (4) and (5) of subdivision (a) continue the substance of a portion of the first sentence of former Section 851.5. Subdivision (b) continues a portion of the first sentence of former Section 851 and a portion of the first sentence of former Section 851.5. Section 7620 is consistent with Section 2520, the comparable provision of guardianship-conservatorship law. See also Section 59 ("personal representative" defined).

043/186

§ 7621. Notice of hearing

7621. (a) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Sections 1200 and 1200.5].

(b) If the petition is for purchase of property in the estate by the personal representative, notice of the hearing shall also be given by mail at least 10 days before the hearing to all heirs and devisees named in the petition for probate of the will or for letters of administration, and to all persons who have requested notice or who have given notice of appearance under Section [1200.1].

(c) At least 30 days prior to the day of the hearing, the petitioner shall also cause notice of the hearing and a copy of the petition to be

served in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure on any person (other than the petitioner [and personal representative]) claiming an interest in, or having title to or possession of, the property.

Comment. Subdivision (a) of Section 7621 continues the substance of a portion of the second sentence and all of the third sentence of former Section 851.5 and supersedes a portion of the second sentence of former Section 851. Subdivision (b) continues the substance of a portion of the last sentence of former Section 583. Subdivision (c) continues the substance of the fourth sentence of former Section 851.5. For the comparable provision in the guardianship-conservatorship law, see Section 2521. See also Section 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

043/187

§ 7622. Continuance for preparation for hearing

7622. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for the hearing, and the court shall grant a continuance for a reasonable time for any of such purposes.

Comment. Section 7622 continues the fifth sentence of former Section 851.5 and is the same as Section 2522 (guardianship-conservatorship law). See also Section 48 ("interested person" defined).

043/190

§ 7623. Filing of notice of lis pendens

7623. If the matter concerns real property, notice of the pendency of the proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure.

Comment. Section 7623 continues the substance of the sixth sentence of former Section 851.5 and is the same as Section 2523 (guardianship-conservatorship law).

043/191

§ 7624. Denial of petition if objection based on venue

7624. Any person having or claiming title to or an interest in the property which is the subject of the petition may, at or prior to the hearing, object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of

law for the trial of a civil action seeking the same relief and, if such objection is established, the court shall not grant the petition.

Comment. Section 7624 continues the seventh sentence of former Section 851.5 and is the same as Section 2524 (guardianship-conservatorship law).

043/192

§ 7625. Abatement of petition if civil action pending

7625. If a civil action is pending with respect to the subject matter of a petition filed pursuant to this article and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of the petition, upon request of any party to the civil action, the court shall abate the petition until the conclusion of the civil action.

Comment. Section 7625 continues the substance of the last sentence of former Section 851.5. For the comparable provision in the guardianship-conservatorship law, see Section 2525.

[Note. Section 2525 of the guardianship-conservatorship law should be amended to add the language "prior to the filing of the petition" to conform to this section.]

043/193

§ 7626. Denial of petition if matter should be determined by civil action

7626. The court shall not grant a petition under this article if the court determines that the matter should be determined by a civil action.

Comment. Section 7626 continues a portion of the first sentence of former Section 852 and is the same as Section 2526 (guardianship-conservatorship law).

043/196

§ 7627. Order

7627. Except as provided in Sections 7624, 7625, and 7626, if the court is satisfied that a conveyance, transfer, or other order should be made, the court shall make an order authorizing and directing the personal representative or other person having title to or possession of the property to execute a conveyance or transfer to the person entitled thereto or granting other appropriate relief.

Comment. Section 7627 continues the substance of a portion of the first sentence of former Section 852 and is the same as Section 2527 (guardianship-conservatorship law). See also Section 59 ("personal representative" defined).

043/198

§ 7628. Execution of conveyance or transfer; effect of order

7628. (a) The personal representative or other person ordered to execute a conveyance or transfer under Section 7857 shall execute the conveyance or transfer according to the terms of the order, and the court may enforce its execution by process.

(b) After entry of an order that the personal representative or other person execute a conveyance or transfer, the person entitled thereunder has the right to the possession of the property, and the right to hold the property, according to the terms of the order as if the property had been conveyed or transferred in accordance with the terms of the order.

Comment. Subdivision (a) of Section 7628 continues the substance of the second sentence of former Section 853. Subdivision (b) continues a portion of the first sentence of former Section 853. The provision of former Section 853 that the order is prima facie evidence of the correctness of the proceedings, and of the authority of the personal representative or other person to make the conveyance or transfer, has been omitted as unnecessary since that is the effect of orders generally in estate proceedings. See *Wood v. Roach*, 125 Cal. App. 631, 639, 14 P.2d 170 (1931); *Fletcher v. Superior Court*, 79 Cal. App. 468, 473-74, 250 P. 195 (1926); 7 B. Witkin, *Summary of California Law Wills and Probate* § 234, at 5742 (8th ed. 1974); Evid. Code §§ 639, 666.

[Note. Should the new Probate Code contain a general provision that probate orders are prima facie evidence of the correctness of the proceedings? Or are Evidence Code Sections 639 and 666 sufficient?]

043/200

Article 6. Notes, Mortgages, Conveyances,
and Exchanges

§ 7640. Borrowing money and encumbering property; exchange of property

7640. The personal representative may do any one or more of the following after authorization by order of court upon a showing that the proposed action is for the advantage of the estate:

(a) Borrow money on a note or notes, either secured or unsecured, and mortgage, give a deed of trust on, pledge, or give other lien or chattel mortgage on real or personal property of the estate or any part

thereof, to pay debts of the decedent, devises under the decedent's will, or expenses or charges of administration.

(b) Pay, reduce, extend, or renew a lien, mortgage, or deed of trust already existing on real or personal property of the estate.

(c) If the property consists of an undivided interest or other interest less than the entire ownership, borrow money to improve, use, operate, or preserve the property jointly with the owners of the other interests therein, or to pay, reduce, extend, or renew some pledge, lien, mortgage, or deed of trust already existing on the property including the other interests therein, and join with the owners of the other interests in the property in executing such joint and several notes as may be necessary, and such pledge, lien, mortgage, or deed of trust as may be required to secure payment.

(d) Exchange any property in the estate for other property on such terms and conditions as the court may prescribe, which may include the payment or receipt of part cash by the personal representative.

Comment. Section 7640 continues the substance of former Section 830 and a portion of the first sentence of former Section 860. See also Section 59 ("personal representative" defined).

045/072

§ 7641. Dedication or conveyance of real property or easement with or without consideration

7641. If it is for the advantage, benefit, and best interests of the estate and those interested therein, the personal representative, after authorization by order of the court, may do any of the following either with or without consideration:

(a) Dedicate or convey any real property of the estate or any interest therein to any public entity (including but not limited to the United States or any agency or instrumentality thereof) for any purpose.

(b) Dedicate or convey an easement over any real property of the estate to any person for any purpose.

(c) Convey, release, or relinquish to any public entity any access rights to any street, highway, or freeway from any real property of the estate.

(d) Consent as a lienholder to a dedication, conveyance, release, or relinquishment under paragraph (1), (2), or (3) by the owner of property subject to the lien.

Comment. Section 7641 continues the substance of a portion of former Section 587 with the addition of paragraph (d). Section 7641 is consistent with subdivision (a) of Section 2556 (guardianship-conservatorship law). See also Sections 56 ("person" defined), 59 ("personal representative" defined).

045/075

§ 7642. Petition

7642. (a) The personal representative or any interested person may file a [verified] petition for an order pursuant to this article.

(b) The petition shall state the purpose for which the order is sought and the necessity for or the advantage to accrue from the order. If applicable, the petition shall also show the amount of money proposed to be raised, the rate of interest to be paid, the length of time the note or notes are to run, and a general description of the property to be encumbered.

Comment. Subdivision (a) of Section 7642 continues the substance of a portion of former Section 587, the first sentence of former Section 831, and a portion of the first sentence of former Section 860. Subdivision (b) continues and generalizes a portion of the first sentence of former Section 831. See also Sections 48 ("interested person" defined), 59 ("personal representative" defined).

045/076

§ 7643. Notice

7643. (a) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Sections 1200 and 1200.5].

(b) If the petition is for authorization to exchange stocks, bonds, or other securities [as defined in Section 771], for different stocks, bonds, or other securities, the court or judge may, upon a showing of good cause, order that the notice be given for a shorter period or that it be dispensed with.

Comment. Subdivision (a) of Section 7643 continues the substance of portions of former Section 587, the first sentence of former Section 860, and the second sentence of former Sections 831 and 860. Subdivision (b) continues the third sentence of former Section 860.

[Note. The provisions in brackets will be superseded by general provisions, to be drafted.]

§ 7644. Hearing; order; effect of order

7644. (a) The court shall hear the petition and any objection thereto. If after a full hearing the court is satisfied that it will be to the advantage of the estate, the court shall make an order authorizing the personal representative to borrow the money and to execute a note or notes, and, in a proper case, to execute a mortgage or deed of trust, or to give other security by pledge or other lien. The court in its order may do any of the following:

(1) Order that a lesser amount than that specified in the petition be borrowed.

(2) Prescribe the maximum rate of interest and the period of the loan.

(3) Direct in what coin or currency the loan shall be paid.

(4) Require that the interest and the whole or any part of the principal be paid from time to time out of the estate or any part thereof.

(5) Require that the personal property used as security or any buildings on real property to be mortgaged or subjected to the deed of trust be insured for the further security of the lender and that the premiums be paid out of the estate.

(b) The note or notes and the mortgage or deed of trust, if any, shall be signed by the personal representative as such and shall create no personal liability against the person so signing.

(c) Every mortgage, pledge, or deed of trust made pursuant to this section is effectual to mortgage, pledge, or subject to the deed of trust all right, title, interest, and estate which the decedent had in the property described therein at the time of his or her death or prior thereto, and any right, title, or interest in the property acquired by the estate of the decedent by operation of law or otherwise since the time of his or her death. Jurisdiction of the court to administer the estate of the decedent shall be effectual to vest the court with jurisdiction to make the order for the note or notes and for the security interest, lien, mortgage, or deed of trust, and such jurisdiction shall conclusively inure to the benefit of the owner of the security interest or lien, mortgagee named in the mortgage, or the trustee and beneficiary named in the deed of trust, and their heirs and assigns. No omission, error, or irregularity in the proceedings shall impair or invalidate the proceedings or the note or notes, security interest, lien, mortgage, or deed of trust given in pursuance thereof.

(d) Except as provided in subdivision (e), upon any foreclosure or sale under a security interest, lien, mortgage, or deed of trust, and the costs or expenses of sale, no judgment or claim for any deficiency shall be had or allowed against the personal representative or the estate.

(e) If the note or notes, security interest, mortgage, or deed of trust was given to pay, reduce, extend, or renew a lien, mortgage, security interest, or deed of trust subsisting at the time of death of the decedent and the indebtedness secured thereby was an allowed and approved claim against the estate, the part of the indebtedness remaining unsatisfied must be classed and paid with other allowed claims against the estate.

Comment. Subdivision (a) of Section 7644 continues the substance of the first and second sentences of former Section 832. Subdivision (b) continues the second sentence of former Section 833. Subdivision (c) continues the substance of the first and second sentences and a portion of the third sentence of former Section 834. Subdivisions (d) and (e) continue the substance of a portion of the third sentence of former Section 834. For the comparable provision in the guardianship-conservatorship law, see subdivisions (c) through (f) of Section 2551. See also Section 59 ("personal representative" defined).

045/152

§ 7645. Repeat authorizations

7645. The court may authorize the action provided in this article as often as the occasion therefor may arise in the administration of the estate.

Comment. Section 7645 continues a portion of the first sentence of former Section 830 and generalizes it to apply to exchanges of property under Section 7640 and to dedications or conveyances under Section 7641.

045/179

Article 7. Leases

§ 7650. Court authorization

7650. (a) Except as provided in subdivision (c), the personal representative may lease real property of the decedent [only] after authorization by order of court upon a showing that the proposed action is for the advantage of the estate. If the lease will include an option to purchase real property of the estate, court approval is required both pursuant to this article and pursuant to [Section 584.3].

(b) The court may authorize the action as often as needed in the administration of the estate.

(c) The personal representative may lease real property without authorization of the court when the rental does not exceed seven hundred fifty dollars (\$750) a month and the term does not exceed one year, or, regardless of the amount of the rental, when the lease is from month to month.

Comment. Subdivisions (a) and (b) of Section 7650 continue the substance of former Sections 840 and 845. Subdivision (c) supersedes former Section 844. The maximum rental under former Section 844 is increased from \$250 a month to \$750 a month, consistent with the guardianship-conservatorship law. See Section 2555. Court supervision for leases for less than \$750 a month adds little protection to the estate, since overbids on these leases are rare and the one-year maximum limit on the lease term under subdivision (c) assures that the lease will terminate before or soon after distribution of the average estate. See Review of 1963 Code Legislation, 38 St. B.J. 601, 777 (1963). Cf. Section 2555 (two-year maximum term in guardianship-conservatorship law).

100/921

§ 7651. Petition; notice

7651. (a) To obtain an order under this article, the personal representative or any interested person may file a [verified] petition with the court. The petition shall state (1) a general description of the property proposed to be leased, (2) the term, rental, and general conditions of the proposed lease, and (3) the advantage to the estate to accrue from giving the lease. If the lease is proposed to be for a term longer than 10 years, the petition shall state additional facts showing the need for the longer lease and its advantage to the estate.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Sections 780, 1200, and 1200.5], except that if the will authorizes or directs the personal representative to lease property, the notice provided in [Section 780] is not required. If the lease is proposed to be for a term longer than 10 years, the petitioner shall also cause notice to be mailed at least 20 days before the hearing to the persons named as devisees under the decedent's will or, in an intestacy proceeding, to the persons named as heirs whose names and addresses appear in the estate proceeding. The personal representative shall give such further notice, if any, as the court may direct.

Comment. Subdivision (a) of Section 7651 continues the substance of the first sentence of former Section 841 and a portion of the first sentence of former Section 842.1. Subdivision (b) continues the substance of a portion of the second sentence and all of the third sentence of former Section 841 and the second sentence of former Section 842.1, except that the authority for the court to require additional notice is applied to all lease proceedings, not merely those where the proposed term is longer than 10 years. For the comparable provision in the guardianship-conservatorship law, see Section 2553(b). See also Sections 48 ("interested person" defined), 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

100/948

§ 7652. Hearing and order

7652. (a) The court shall hear the petition and any objection thereto and may require such additional proof of the fairness and feasibility of the transaction as the court determines is necessary. The court shall also entertain and consider any other offer made in good faith at the hearing to lease the same property on more favorable terms. If the court is satisfied that it will be to the advantage of the estate, the court shall make an order authorizing the personal representative to make the lease to the person and on the terms stated in the order. The court shall not make an order authorizing the personal representative to make the lease to any person other than the lessee named in the petition unless the offer made at the hearing is acceptable to the personal representative.

(b) Jurisdiction of the court to administer the estate of the decedent shall be effectual to vest the court with jurisdiction to make the order for the lease, and such jurisdiction shall conclusively inure to the benefit of the lessee and the lessee's heirs and assigns. No omission, error, or irregularity in the proceedings shall impair or invalidate the proceedings or the lease made in pursuance thereof.

Comment. Subdivision (a) of Section 7652 continues the substance of the first sentence of former Section 842. Subdivision (b) continues the substance of the third and fourth sentences of former Section 843. Section 7652 is the same as subdivisions (c) and (d) of Section 2553 (guardianship-conservatorship law). See also Section 59 ("personal representative" defined).

§ 7653. Terms and conditions of leases

7653. (a) An order authorizing the execution of a lease shall set forth the minimum rental or royalty and the period of the lease, which shall be for such time as the court may authorize, except that the court shall not authorize a lease for longer than 10 years if any heir or devisee who has an interest in the property to be leased objects at the hearing.

(b) The order may authorize other terms and conditions, including, with respect to a lease for the purpose of minerals, oil, gas, or other hydrocarbon substances, any of the following:

(1) A provision for the payment of rental and royalty to a depository.

(2) A provision for the appointment of a common agent to represent the interests of all the lessors.

(3) A provision for the payment of a compensatory royalty in lieu of rental and in lieu of drilling and producing operations on the land covered by the lease.

(4) A provision empowering the lessee to enter into any agreement authorized by Section 3301 of the Public Resources Code with respect to the land covered by the lease.

(5) A provision for pooling or unitization by the lessee.

(c) If the lease covers additional property owned by other persons or an undivided or other interest of the decedent less than the entire ownership in the property, the lease may provide for division of rental and royalty in the proportion that the land or interest of each owner bears to the total area of the land or total interests covered by such lease.

(d) A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances may be for a fixed period and any of the following:

(1) So long thereafter as minerals, oil, gas, or other hydrocarbon substances are produced in paying quantities from the property leased or mining or drilling operations are conducted thereon.

(2) If the lease provides for the payment of a compensatory royalty, so long thereafter as such compensatory royalty is paid.

(3) If the land covered by the lease is included in an agreement authorized by Section 3301 of the Public Resources Code, so long thereafter

as oil, gas, or other hydrocarbon substances are produced in paying quantities from any of the lands included in any such agreement or drilling operations are conducted thereon.

Comment. Section 7653 continues the substance of the second, third, fourth, and fifth sentence of former Section 842, and the last sentence of former Section 842.1. Under subdivision (a), the court may not authorize a lease for longer than 10 years if any heir or devisee who has an interest in the property to be leased objects at the hearing. It was not clear whether the former provision applied to all leases longer than 10 years, or merely to leases authorized under former Section 841.1. The reference in former Section 842 to a lease for the growing of asparagus is omitted, since under Section 7653 a lease may be authorized for longer than 10 years for any purpose if the advantage to the estate is shown. See Section 7651(a). See also Review of Selected 1965 Code Legislation 220 (Cal. Cont. Ed. Bar 1965) (average growing life of asparagus is 15 years).

Section 7653 is similar to Section 2554 (guardianship-conservatorship law).

368/238

Article 8. Investments and Purchase of Property

§ 7660. Investment in federal or state securities; purchase of annuity

7660. (a) Pending settlement or at the time of settlement of the estate, on petition of the personal representative or any interested person, the court may, upon good cause shown, order that any money in the hands of the personal representative be invested for the benefit of the estate in either or both of the following:

- (1) In securities of the United States or of this state.
- (2) In the purchase from an insurer, admitted to do business in this state, for any devisee named in the will of an annuity expressly granted to him or her by the will.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Section 1200.5].

Comment. Section 7660 continues the substance of former Section 584. The provision of former Section 584 that the clerk shall set the petition for hearing by the court is continued in Section 7142. For comparable provisions in the guardianship-conservatorship law, see Sections 2459(b)(2) (annuity policies), 2573-2574 (securities). See also Sections 48 ("interested person" defined), 59 ("personal representative defined").

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

§ 7661. Investment in direct obligations of the United States

7661. Pending settlement of the estate, the personal representative may, without prior court authorization, invest and reinvest in any or all of the following:

(a) Direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment.

(b) Mutual funds which are comprised of direct obligations of the United States maturing not later than one year from the date of making the investment or reinvestment.

(c) Mutual funds which are comprised of repurchase agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

Comment. Section 7661 continues the substance of former Section 584.1. For a comparable provision in the guardianship-conservatorship law, see Section 2574. See also Section 59 ("personal representative" defined).

404/081

§ 7662. Exercise of restricted stock options

7662. (a) If an asset of the estate consists of an option right which is nontransferable except by testate or intestate succession from the decedent, the personal representative may exercise the option if it would be in the best interest of the estate and of those interested in the estate, and if the exercise would add value to the estate.

(b) The personal representative may exercise the option only after obtaining an order of court.

(c) The personal representative may use any funds or property in the estate to acquire the property covered by the option.

(d) Notice of the hearing on the petition shall be given for the period and in the manner provided by [Section 1200], but the court may order the notice to be given for a shorter period or dispensed with.

Comment. Section 7662 continues the substance of former Section 584.2. The provision of former Section 584.2 that the petition shall be filed with the clerk is omitted as unnecessary. The provision of former Section 584.2 that the clerk shall set the petition for hearing by the court is continued in Section 7142. See also Section 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

§ 7663. Investment of surplus money as provided in will

7663. (a) The personal representative or other interested person may file a [verified] petition under this section if all of the following conditions are satisfied:

- (1) There is surplus money in the estate.
- (2) The will authorizes investment and reinvestment of surplus money in the estate.
- (3) The time for filing or presenting claims has expired.
- (4) All uncontested claims have been paid or are sufficiently secured by mortgage or otherwise.
- (5) The estate is not in a condition to be finally closed and distributed.

(b) The petition [shall be verified and] shall show the general condition of the estate and the types of investments proposed to be made.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided by [Section 1200]. In addition, the personal representative shall cause notice of the hearing and a copy of the petition to be mailed to all known devisees of property which is proposed to be invested. Where the property proposed to be invested is devised to a trustee, notice of the hearing and a copy of the petition shall be mailed to the trustee and to all persons in being who may participate in the corpus or income of the trust. Mailing pursuant to this subdivision shall be to the person's last known address as provided in [Section 1200.5].

(d) The court may make an order authorizing or directing the personal representative to invest and reinvest such portion of the proceeds of sales or other surplus money of the estate as the court deems advisable in the types of investments proposed in the petition and authorized by the will. If there is no substantial reason why some or all of the investment powers given by the will should not be exercised, the court shall make the order. The order may be for a limited period or until the administration of the estate is completed. The order may be renewed, modified, or terminated at any time on petition in the same manner as for an initial order.

Comment. Section 7663 supersedes former Sections 584.5 and 584.6. Subdivision (a) continues the substance of the first sentence and a portion of the second sentence of former Section 584.5. Subdivision (a) permits the personal representative or "other interested person" to file a petition under this section. Former Section 584.5 permitted the personal representative to file an initial petition, while former Section 584.6 permitted any person interested to file a petition for renewal, modification, or termination of the order.

Subdivision (b) continues the substance of a portion of the second sentence of former Section 584.5. Subdivision (c) continues the substance of the third, fourth, and fifth sentence of former Section 584.5. The provision in the third sentence of former Section 584.5 requiring the clerk to set the petition for hearing by the court is continued in Section 7142. The language of the fourth and fifth sentences of former Section 584.5 requiring notice to persons "whether or not they have requested special notice or given notice of appearance" has been omitted as unnecessary.

Subdivision (d) continues the substance of a portion of the first sentence of former Section 584.5 (court "may" authorize) and all of former Section 584.6. The language of former Section 574.6 that "[a]t the time appointed, the court shall hear the petition if no objection thereto has been filed by any interested party" is not continued. The former language appeared to preclude the court from hearing the matter if an interested party objected.

See also Section 59 ("personal representative" defined).

[Note. The notice provisions in brackets will be superseded by general notice provisions, to be drafted.]

404/163

§ 7664. Common trust funds

7664. Pending settlement of the estate, the personal representative may invest money in his or her hands for the benefit of the estate, without prior court authorization, in units of a common trust fund described in Section 1564 of the Financial Code which invests primarily in short term fixed income obligations. The common trust funds may value investments at cost pursuant to regulations of the appropriate regulatory authority.

Comment. Section 7664 continues the substance of former Section 585.1. See also Section 59 ("personal representative" defined).

CONFORMING REVISIONS

Government Code § 21207 (technical amendment). Minors

SEC. __. Section 21207 of the Government Code is amended to read:

21207. If any person entitled to a benefit from this system is a minor who has no guardian of the estate, the board, if within the limits as to amount of payment and value of the minor's estate specified as of the time of payment under the provisions of the Probate Code authorizing payment to a parent of a minor entitled to the minor's custody, may pay it to the person entitled to custody of the minor to hold for the minor, if the person files with the board a verified statement that the total estate of the minor does not exceed the value so specified or, if in excess of such limits, may pay it to the probate court, and the court may order that such money be deposited in a bank or banks, or a trust company or companies, or invested in an account or accounts in an insured savings and loan association or associations, subject to withdrawal only on order of the probate court, or it may require a guardian of the estate to be appointed and the money paid to such guardian, or prescribe such other conditions as the court in its discretion deems to be in the best interest of the minor. Payment so made is a full discharge of the board and this system. The person shall account to the minor for the money when the minor reaches the age of majority.

The term "account in an insured savings and loan association" used in this section has the same meaning as in Section ~~1406~~ 21.5 of the Probate Code.

Comment. Section 21207 is amended to substitute the reference to new Section 21.5 of the Probate Code for the former reference to Section 1406.

404/167

Probate Code § 21.5 (added). Account in an insured savings and loan association

SEC. __. Section 21.5 is added to the Probate Code, to read:

21.5. (a) "Account in an insured savings and loan association" means any of the following:

- (1) Shares issued by a federal savings and loan association.
- (2) Investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in

this state which is an "insured institution" as defined in Title IV of the National Housing Act.

(3) Shares issued by a state-chartered building and loan association or savings and loan association doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

(b) Any reference in the statutes of this state to the definition of the term "account in an insured savings and loan association" in former Section 1406 or 1510 of the Probate Code shall be deemed to be a reference to the definition of that term in this section.

Comment. Subdivision (a) of Section 21.5 continues former Section 1406. Subdivision (b) continues a provision formerly found in subdivision (c) of Section 1490.

Note. The term "account in an insured savings and loan association" is used in Sections [541.1], 2328, 2331, 2453, 2456, 2911, 3412, 3413, 3500, 3602, 3611, and 7570. See also Gov't Code § 21207.

404/185

Probate Code § 59 (added). Personal representative

SEC. __. Section 59 is added to the Probate Code, to read:

59. "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

Comment. Section 59 is the same as Section 1-201(30) of the Uniform Probate Code.

404/281

Probate Code § 72 (added). Shares of an insured credit union

SEC. __. Section 72 is added to the Probate Code, to read:

72. (a) "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act.

(b) Any reference in the statutes of this state to the definition of the term "shares of an insured credit union" in former Section 1443 or 1510 of the Probate Code shall be deemed to be a reference to the definition of that term in this section.

Comment. Subdivision (a) of Section 72 continues former Section 1443. Subdivision (b) continues a provision formerly found in subdivision (c) of Section 1490.

Note. The term "shares of an insured credit union" is used in Sections _____, 2453, 2456, 3412, 3413, 3500, 3602, 3611, and 7570.

404/282/NZ

Probate Code § 1406 (repealed). Account in an insured savings and loan association

SEC. __. Section 1406 of the Probate Code is repealed.

1406. "Account in an insured savings and loan association" means any of the following:

(a) Shares issued by a federal savings and loan association.

(b) Investment certificates issued by a state-chartered building and loan association or savings and loan association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act.

(c) Shares issued by a state-chartered building and loan association or savings and loan association doing business in this state which does not issue investment certificates and which is an "insured institution" as defined in Title IV of the National Housing Act.

Comment. Former Section 1406 is continued in Section 21.5.

404/283/NZ

Probate Code § 1443 (repealed). Shares of an insured credit union

SEC. __. Section 1443 of the Probate Code is repealed.

1443. "Shares of an insured credit union" means shares issued by a credit union, either federally chartered or state licensed, which are insured under Title II of the Federal Credit Union Act or participation in the California Credit Union Share Guaranty Corporation or such other form of insurance or guaranty as approved pursuant to Section 14858 of the Financial Code.

Comment. Former Section 14403 is continued in Section 72.

Probate Code § 1490 (amended). References in statutes

SEC. __. Section 1490 of the Probate Code is amended to read:

1490. (a) When used in any statute of this state with reference to an adult or to the person of a married minor, "guardian" means the conservator of that adult or the conservator of the person in case of the married minor.

(b) Any reference in the statutes of this state to the term "absentee" or "secretary concerned" as defined in former Section 1751.5 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

(c) Any reference in the statutes of this state to the definitions of the ~~terms "account in an insured savings and loan association,"~~ ~~"shares of an insured credit union,"~~ or term "single-premium deferred annuity" in former Section 1510 of the Probate Code shall be deemed to be a reference to the definitions of those terms in this division.

Comment. Subdivision (c) of Section 1490 is amended to delete the former reference to the terms "account in an insured savings and loan association" and "shares of an insured credit union." The substance of the deleted provisions is continued in Sections 21.5 and 72.

DISPOSITION OF EXISTING SECTIONS

DIVISION 3. ADMINISTRATION OF ESTATES
OF DECEDENTSCHAPTER 8. POWERS AND DUTIES OF EXECUTORS
AND ADMINISTRATORSArticle 1. Powers and Duties Generally§ 570. (repealed). Multiple executors or administrators

Comment. Former Section 570 is continued in substance in Section 7560.

§ 571 (repealed). Possession of decedent's estate

Comment. The first sentence of former Section 571 is continued in paragraph (1) of subdivision (a) of Section 7551. The second, third, and fourth sentences of former Section 571 are continued in subdivision (a) of Section 7556. The language of the fourth sentence of former Section 571 that if the surviving partner neglects or refuses to render an account as ordered by the court, the court "may, after notice, compel it by attachment," has been omitted as unnecessary. If the surviving partner neglects or refuses to obey the court's order, the court may enforce the order by contempt as in other cases. See Code Civ. Proc. § 1209(a)(5).

§ 572 (repealed). Operation of decedent's business

Comment. The first portion of the first sentence of former Section 572 (decedent's business other than partnership) is continued in Section 7555. The remainder of former Section 572 is continued in subdivision (b) of Section 7556.

§ 573 (repealed). Effect of death on causes of action

Comment. Former Section 573 is continued in substance in Section 7580.

§ 575 (repealed). Action for partition

Comment. Former Section 575 is continued in substance in Section 7581.

§ 576 (repealed). Action on bond of former executor or administrator

Comment. Former Section 576 is continued in substance in Section 7582.

§ 577 (repealed). Dispensable parties

Comment. Former Section 577 is continued in substance in Section 7583.

§ 578 (repealed). Compromise, extension, discharge of debts

Comment. Former Section 578 is superseded by Sections 7600-7606.

§ 578a (repealed). Settlement of wrongful death and personal injury claims

Comment. Former Section 578a is superseded by Sections 7600-7606.

§ 579 (repealed). Duty to recover property transferred in fraud of creditors

Comment. Former Section 579 is continued in substance in Section 7553.

§ 580 (repealed). Payment of costs and expenses; sale of property recovered

Comment. Former Section 580 is continued in substance in Section 7554.

§ 581 (repealed). Possession of decedent's estate

Comment. Former Section 581 is continued in substance in Section 7551. The last portion of the fourth sentence of former Section 581 ("but they are not required to do so") has been omitted as unnecessary. See Section 12 ("may" is permissive).

§ 582 (repealed). Delivery of real property to heirs or devisees

Comment. Former Section 582 is continued in Section 7557.

§ 583 (repealed). Purchase of estate property by executor or administrator

Comment. The last portion of the first sentence of former Section 583 (if personal representative pays claim for less than full amount, he or she may have credit in the accounts only for amount actually paid) is continued in Section [to be drafted]. The remainder of former Section 583 is superseded by Section 7552.

§ 584 (repealed). Investment in federal or state securities; purchase of annuity

Comment. Former Section 584 is continued in substance in Section 7660.

§ 584.1 (repealed). Investment in direct obligations of the United States

Comment. Former Section 584.1 is continued in substance in Section 7661.

§ 584.2 (repealed). Exercise of restricted stock options

Comment. Former Section 584.2 is continued in substance in Section 7662. The provision of former Section 584.2 that the petition shall be filed with the clerk is omitted as unnecessary.

§ 584.3 (repealed). Granting option to purchase real property

Comment. Former Section 584.3 is continued [in chapter on sales].

§ 584.5 (repealed). Investment of surplus money as provided in will

Comment. Former Section 584.5 is superseded by subdivisions (a), (b), and (c) of Section 7663.

§ 584.6 (repealed). Hearing, notice, and order

Comment. Former Section 584.6 is superseded by subdivision (d) of Section 7663. The former language that "[a]t the time appointed, the court shall hear the petition if no objection thereto has been filed by any interested party" is not continued. The former language appeared to preclude the court from hearing the matter if an interested party objected.

§ 585 (repealed). Bank and savings and loan accounts

Comment. Former Section 585 is continued in substance in Section 7570, except that the provision discharging the personal representative from further care of or responsibility for deposited funds until withdrawn is not continued. The extent of the personal representative's care or responsibility for deposited funds is determined under Section 7550 (duty to use ordinary care and diligence).

404/294

§ 585.1 (repealed). Common trust funds

Comment. Former Section 585.1 is continued in substance in Section 7664.

§ 586 (repealed). Deposit of personal property with trust company

Comment. Former Section 586 is continued in substance in Section 7571.

§ 586.1 (repealed). Deposit of securities in securities depository by trust company

Comment. Former Section 586.1 is continued in substance in subdivision (b) of Section 7572.

§ 586.5 (repealed). Direct distribution by depository

Comment. Former Section 586.5 is continued in substance in Section 7573.

§ 587 (repealed). Dedication or conveyance of real property or easement with or without consideration

Comment. Former Section 587 is continued in substance in Sections 7641-7643.

§ 588 (repealed). Petition for instructions

Comment. Former Section 588 is continued in Section 7561.

§ 589 (repealed). Voting rights with respect to corporate shares or memberships or property

Comment. Former Section 589 is continued in substance in Section 7558, except that the former requirement that authorization by a personal representative of any action which could be taken by shareholders be "in writing" is not continued.

§ 590 (repealed). Deposit of securities in securities depository

Comment. Former Section 590 is continued in substance in subdivisions (a) and (c) of Section 7572.

404/298

CHAPTER 14. NOTES, MORTGAGES, LEASES,
CONVEYANCES AND EXCHANGES

Article 1. Borrowing Money and Mortgaging Property

§ 830 (repealed). Borrowing money and encumbering property

Comment. Former Section 830 is continued in substance in Section 7640.

§ 831 (repealed). Petition; notice

Comment. The first sentence of former Section 831 is continued in Section 7642. The first portion of the second sentence (clerk shall set petition for hearing by court) is continued in Section 7142. The last portion of the second sentence (notice) is continued in subdivision (a) of Section 7643.

§ 832 (repealed). Hearing; order

Comment. The first and second sentences of former Section 832 are continued in substance in subdivision (a) of Section 7644. The third

sentence of former Section 832 (recording required of certified copy of order) is continued in Section 7511.

§ 833 (repealed). Execution of notes and instruments of security

Comment. The first sentence of former Section 833 is continued in substance in Section 7511. The second sentence is continued in subdivision (b) of Section 7644.

§ 834 (repealed). Effectiveness of encumbrance; jurisdiction; effect of errors or irregularities; deficiencies on foreclosure sale

Comment. The first, second, and third sentences of former Section 834 are continued in substance in subdivisions (c), (d), and (e) of Section 7644, except that the language that the "mortgagee, pledgee or the trustee and beneficiary, their heirs and assignees, shall have and possess the same rights and remedies on the note or notes and mortgage, pledge or deed of trust as if it had been made by the decedent prior to his death" is continued in substance in Section 7511.

404/332

Article 2. Leasing

§ 840 (repealed). Court authorization

Comment. Former Section 840 is continued in substance in subdivisions (a) and (b) of Section 7650.

§ 841 (repealed). Petition; notice

Comment. The first sentence of former Section 841 is continued in subdivision (a) of Section 7651. The first portion of the second sentence of former Section 841 (clerk to set petition for hearing by the court) is continued in Section 7142. The last portion of the second sentence and all of the third sentence (notice) are continued in subdivision (b) of Section 7651.

§ 842 (repealed). Hearing and order

Comment. The first sentence of former Section 842 is continued in substance in subdivision (a) of Section 7652. The second, third, fourth, and fifth sentences of former Section 842 are continued in substance in Section 7653.

§ 842.1 (repealed). Leases longer than 10 years

Comment. The first sentence of former Section 842.1 is continued in substance in the second sentence of subdivision (a) of Section 7651 and in subdivision (a) of Section 7653. The second sentence of former Section 842.1 is continued in substance in subdivision (b) of Section 7651. Former Section 842.1 provided that the notice there prescribed was in addition to the notice required by former Section 841.

The third sentence of former Section 842.1 is continued in subdivision (a) of Section 7653.

§ 843 (repealed). Execution of lease; jurisdiction of court; error in proceedings

Comment. The first two sentences of former Section 843 are continued in substance in Section 7511. The third and fourth sentences of former Section 843 are continued in subdivision (b) of Section 7652.

§ 844 (repealed). Leases without court order

Comment. Former Section 844 is superseded by subdivision (c) of Section 7650.

§ 845 (repealed). Lease with option to purchase

Comment. Former Section 845 is continued in substance in the second sentence of subdivision (a) of Section 7650.

404/333

Article 3. Conveyance to Complete Contract

§ 850 (repealed). When court order authorized

Comment. Former Section 850 is continued in substance in paragraphs (1) and (2) of subdivision (a) of Section 7620.

§ 851 (repealed). Petition; notice

Comment. The first sentence of former Section 851 is continued in substance in the introductory paragraph of subdivision (a) of, and in subdivision (b) of, Section 7620. The first portion of the second sentence of former Section 851 (clerk to set petition for hearing by court) is continued in Section 7142. The last portion of the second sentence (notice) is superseded by subdivision (a) of Section 7621.

§ 851.5 (repealed). Conveyance or transfer of property claimed to belong to decedent or other person

Comment. The first sentence of former Section 851.5 is continued in substance in paragraphs (4) and (5) of subdivision (a) of, and in subdivision (b) of, Section 7620. The first portion of the second sentence of former Section 851.5 (clerk to set petition for hearing by court) is continued in Section 7142. The last portion of the second sentence (notice) of, and all of the third sentence of, former Section 851.5 is superseded by subdivision (a) of Section 7621. The fourth sentence of former Section 851.5 is continued in substance in subdivision (c) of Section 7621. The fifth sentence of former Section 851.5 is continued in Section 7622. The sixth sentence of former Section 851.5 is continued in substance in Section 7623. The seventh sentence of former Section 851.5 is continued in Section 7624. The last sentence of former Section 851.5 is continued in Section 7625.

§ 852 (repealed). Hearing and order

Comment. The first portion of the first sentence of former Section 852 that the court shall hear the matter "upon proof that due notice of the hearing of the petition . . . has been given" is continued in substance in Section 7158. The last portion of the first sentence is continued in substance in Sections 7626 and 7627. The second sentence of former Section 852 (certified copy of order affecting real property shall be recorded) is continued in substance in subdivision (b) of Section 7511.

404/335

§ 853 (repealed). Execution of conveyance or transfer; effect of order

Comment. The first portion of the first sentence of former Section 853 that the order is prima facie evidence of the correctness of the proceedings, and of the authority of the personal representative or other person to make the conveyance or transfer, is omitted as unnecessary, since that is the effect of orders generally in estate proceedings. See *Wood v. Roach*, 125 Cal. App. 631, 639, 14 P.2d 170 (1931); *Fletcher v. Superior Court*, 79 Cal. App. 468, 473-74, 250 P. 195 (1926); 7 B. Witkin, *Summary of California Law Wills and Probate* § 234, at 5742 (8th ed. 1974); Evid. Code §§ 639, 666; cf. Section 7511. The last portion of the first sentence of former Section 853 is continued in subdivision (b) of Section 7628. The second sentence of former Section 853 is continued in subdivision (a) of Section 7628. The last sentence of former Section 853 is continued in Section 7511.

§ 854 (repealed). Option to purchase given in will

Comment. Former Section 854 is continued in substance in Sections 7142 and 7559.

404/337

Article 4. Exchange of Property§ 860 (repealed). Exchange of property

Comment. The first sentence of former Section 860 is continued in substance in subdivision (d) of Section 7640, in subdivision (a) of Section 7642, and in subdivision (a) of Section 7643. The second sentence of former Section 860 is continued in substance in subdivision (a) of Section 7643. The third sentence of former Section 860 is continued in subdivision (b) of Section 7643.