

Memorandum 85-31

Subject: Study L-1020 - Probate Code (Sales)

Attached is a staff draft of new Probate Code provisions concerning sales of estate property. At the end of the staff draft are Comments to the sections of existing law which would be repealed, showing where the existing provisions may be found in the staff draft.

At the June 1984 meeting, the Commission decided to keep the general scheme for estate sales, subject to technical revisions and drafting improvements. The staff draft generally continues the substance of existing law, reorganizes it into a more logical structure, and attempts to clarify some obscure provisions. The staff draft presents the following policy questions:

Sale of Mining Property

The staff proposes not to continue the existing provisions concerning sale of mining property (Sections 810-814). Under these provisions, when mining property is to be sold, two court proceedings are required: one on the petition for a court order authorizing the sale, and another on the petition for court confirmation of sale. This procedure seems cumbersome, unnecessary, and wasteful. One commentator has noted that "[f]ew cases have interpreted these provisions, which apparently are rarely used." Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.71, at 554 (Cal. Cont. Ed. Bar 1971).

The staff therefore proposes to treat estate sales of mining property under the provisions applicable to real property sales generally, with the result that only one court hearing (on confirmation of sale) will be required.

Public Auction of Intangible Personal Property

There appears to be a conflict in existing law concerning whether intangible personal property may be sold at public auction. Section 754 (continued in proposed Section 8245) authorizes "property of the estate" to be sold at public auction, without limitation to tangible personal property. And Section 774 (continued in proposed Section 8241) permits partnership interests and choses in action--both intangible personal

property--to "be sold in the same manner as other personal property." These provisions appear to authorize sale of intangible personal property at public auction.

Other provisions suggest the contrary. Section 772 (continued in proposed Section 8272) requires that personal property be present at the auction. And Section 760.5 (continued in proposed Section 8261) permits the personal representative to hire an auctioneer to auction "any tangible personal property of the estate."

Under the Uniform Probate Code, the personal representative may do anything that an absolute owner of the property could do, including selling any estate property. UPC §§ 3-711, 3-715(23). No restriction is made on method of sale, and no distinction is made between tangible and intangible personal property.

The staff is inclined to make clear that intangible personal property may be sold at public auction, to require only that tangible personal property be present at the auction, and to expand the authority of an auctioneer to include the sale of intangible personal property. Does the Commission approve this revision?

Notice of Sale of Subscription Rights

Existing Section 771 (continued in proposed Section 8277) provides a simplified procedure for sale of securities generally, and Section 771.5 (continued in proposed Section 8279) provides a simplified procedure for sale of subscription rights to purchase additional securities. There is an apparent inconsistency in these two sections which the staff draft eliminates.

In the case of securities generally, notice of sale by posting or publication is not required. Prob. Code § 772 (continued in proposed Section 8270). The personal representative petitions the court before the sale, and the court either sets a minimum price or requires sale on an established exchange. No court confirmation is required. Prob. Code § 771. Not only is notice of sale not required, but the court ordinarily dispenses with notice of the hearing on the petition for authority to sell. Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.64, at 549 (Cal. Cont. Ed. Bar 1971).

Subscription rights may be sold without any court approval at all. Prob. Code § 771.5. However, this section does not expressly dispense

with notice of sale. In the absence of an express exception, Section 772 would appear to require notice of sale of subscription rights by posting or publication.

It seems anomalous that greater notice is required for subscription rights than for the securities themselves. Accordingly, the staff has drafted proposed Section 8270 (notice of sale) to dispense with posted or published notice of sale for subscription rights.

Real Property Sale Without Notice When Authorized by Will

When the decedent's will authorizes or directs that estate property be sold, the executor may sell "with or without notice, as he may determine." Prob. Code § 757 (continued in proposed Section 8290). Under case law, it is not necessary that the will specifically give authority to sell without notice. If the will directs or authorizes the sale, the executor has discretion to determine whether or not notice should be given. See *Bagley v. Bloom*, 19 Cal. App. 255, 271, 125 P. 931 (1912).

However, it is the policy in Los Angeles County to require notice of sale of real property unless the will specifically grants the executor authority to sell without notice. Los Angeles County Probate Policy Memorandum § 12.02, in California Local Probate Rules (4th ed., Cal. Cont. Ed. Bar 1983). Is this the better rule, and, if so, should proposed Section 8290 be revised accordingly?

Minimum Overbid for Real Property

It has been suggested to the Commission that the minimum overbid for real property (10% on first \$10,000 bid and 5% on the excess) might be reduced in view of recent increases in real property values. For example, on a \$250,000 bid, the minimum overbid would be \$263,000. Should overbidding be made easier by reducing this margin?

After the first overbid, additional higher bids are not subject to the 5%/10% requirement, and may be as little as one dollar more than the previous overbid. The court, however, has discretion to require bids in multiples of \$50, \$100, or larger units, or may simply close the bidding in the face of a one dollar overbid. 1 A. Marshall, California Probate Procedure § 1404 (4th ed. 1984). It has been suggested that the statute perhaps should require some minimum increase for subsequent overbids. Should this suggestion be adopted?

Personal Representative's Power to Refuse Overbid for Real Property

The staff is concerned that Section 785.1 (continued in proposed Section 8297) may give the personal representative too much power to

reject a favorable overbid at the confirmation hearing for a sale of real property. Before the section was enacted in 1971, some courts took the position that if the original bid was on credit and there was an overbid for cash, then all subsequent increased bids also had to be for cash. Review of Selected 1971 California Legislation, 3 Pac. L.J. 191, 206 (1972). Section 785.1 was enacted to change this practice. Id.

Under Section 785.1 the court may not consider an overbid which is not acceptable to the personal representative in three of the possible four cases:

(1) If the original bid is on credit and the overbid is for cash. (This is the case that prompted the legislation.)

(2) If the original bid is on credit and the overbid is on credit, whether on the same or different credit terms.

(3) If the original bid is for cash and the overbid is on credit.

In the fourth case (original bid for cash, overbid for cash), the personal representative does not have power to reject the overbid.

Not only is Section 785.1 broader than the case it was drawn to address, but it raises the question whether it is desirable to give the personal representative the power to prevent the court from considering a favorable overbid. Should this provision be redrawn?

Special Notice in Estate Sales

Mailed notice is more likely to give actual notice than is notice by publication or posting. Existing provisions permit interested persons to request special notice, given by mail, of some aspects of estate sales, but not others. See Prob. Code § 1200.5. There is no apparent logic to the existing scheme. Perhaps special notice should be expanded to include more aspects of estate sales.

For example, special notice may be requested of a resale of personal property after an original purchaser has defaulted. Prob. Code § 775 (continued in proposed Section 8310). However, there is no comparable authority to request special notice of a resale of real property after default. See Prob. Code § 788 (continued in proposed Section 8310). Notice of resale of real property is the same as for sale in the first instance (id.), that is, by publication (Prob. Code § 780, continued in proposed Section 8290). Should special notice be authorized on resale of real property?

Special notice may be requested of a petition for court confirmation of sale of real or personal property and of a petition for the sale of stocks or bonds. Prob. Code § 1200.5. However, the first step in an estate sale is the notice of sale which is merely posted or published. Prob. Code §§ 772, 780 (continued in proposed Sections 8270, 8290). Competitive bidding might be encouraged by giving special notice at this early stage, rather than waiting for the court hearing. Is this a desirable change?

Procedural Differences in Real and Personal Property Sales That Might Be Eliminated

There are some procedural differences in real and personal property sales that have no obvious justification. To the extent these may be eliminated, the statute and court forms can be simplified.

Written bids for private sales. Bids for private sales of real property must be in writing and may be left at the place designated in the notice of sale, delivered to the personal representative, or filed with the clerk of court. Prob. Code § 782 (continued in proposed Section 8293). There is no express requirement that bids for private sales of personal property be in writing. See Prob. Code § 772 (continued in proposed Section 8273). However, the form of notice of sale of personal property prescribed in the CEB book requires written bids. See Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.53, at 540 (Cal. Cont. Ed. Bar 1971).

Should the personal property statute require that bids for private sales of personal property be in writing and prescribe the manner of delivery, the same as for real property?

Exposing property to market; price not disproportionate to value. At the confirmation hearing for sale of real property, the court must examine into the efforts of the personal representative to expose the property to the market, and may confirm the sale only if the sum bid is not disproportionate to the value of the property. Prob. Code § 785 (continued in proposed Sections 8296, 8298). There is no comparable requirement for personal property. Hudner, supra § 14.56, at 542 (statutes for sale of personal property "do not require that the purchase price of

the property bear any relation to its value"). Should the personal property statutes be revised to include these requirements?

Respectfully submitted,

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DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 5. ESTATE MANAGEMENT

CHAPTER 3. INVESTMENTS AND PURCHASE OF PROPERTY

§ 8135. Purchase of securities or commodities sold short

8135. (a) Upon obtaining a prior order of court, the personal representative may purchase securities or commodities required to perform an incomplete contract of sale where the decedent died having sold but not delivered securities or commodities not owned by him or her. The court's order shall fix the terms and conditions of purchase.

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Section 1200], but the court or judge may order the notice to be given for a shorter period or dispensed with. When the maximum purchase price is fixed or when the securities or commodities are to be purchased on an established stock, bond, or commodity exchange, no notice need be given.

Comment. Section 8135 continues the substance of former Section 771.3. See also Section 59 ("personal representative" defined).

38029

CHAPTER 11. SALES

Article 1. Definitions and General Provisions§ 8240. Application of definitions

8240. Unless the provision or context otherwise requires, the words and phrases defined in this article govern the construction of this chapter.

Comment. Section 8240 is new and is comparable to Section 20.

31174

§ 8241. Personal property

8241. "Personal property" includes the following:

(a) Partnership interests and interests belonging to an estate by virtue of any partnership formerly existing.

(b) An interest in personal property pledged.

(c) Choses in action.

(d) Notwithstanding Section 58, a leasehold interest in real property with an unexpired term of less than 10 years where the leasehold interest is not combined with an option to purchase the leased premises or some part thereof.

Comment. Subdivisions (a), (b), and (c) of Section 8241 continue the substance of the first sentence of former Section 774. A partner's interest in the partnership is that partner's share of the profits and surplus and is itself personal property. Corp. Code § 15026; Kenworthy v. Hadden, 87 Cal. App.3d 696, 701, 151 Cal. Rptr. 169 (1978); see generally Annot., 80 A.L.R.2d 1107 (1961).

Subdivision (d) continues the substance of the second sentence of former Section 754.6.

27230

§ 8242. Rapidly depreciating property

8242. "Rapidly depreciating property" means personal property which is perishable, which will depreciate in value if not disposed of promptly, or which will incur loss or expense by being kept.

Comment. Section 8242 is new and is taken from a portion of former Section 770.

26967

§ 8243. Real property

8243. "Real property" includes the following:

(a) The decedent's interest under a contract for the purchase of real property by the decedent.

(b) Notwithstanding Section 68, a leasehold interest in real property with an unexpired term of 10 years or longer, any leasehold interest in real property when combined with an option to purchase the leased premises or some part thereof, or an oil or gas leasehold interest.

Comment. Subdivision (a) of Section 8243 is drawn from a portion of former Section 800, pursuant to which sale of the decedent's contract right to purchase real property was treated in the same manner as sale of real property generally. This is consistent with the general treatment of such interests as real property at the decedent's death. See Fleishman v. Woods, 135 Cal. 256, 259, 67 P. 276 (1901) (equitable estate of vendee "is alienable, descendible, and devisable in like manner as real estate held by a legal title"); Retsloff v. Smith, 79 Cal. App. 443, 448, 249 P. 886 (1926) ("[i]f the purchaser dies while the contract is in force and effect, his interest passes to his heirs as real property").

Subdivision (b) continues the substance of the first sentence of former Section 754.6.

§ 8244. When estate property must or may be sold

8244. (a) The personal representative shall sell real or personal property of the estate as provided in this chapter (1) when necessary to pay debts, devisees, family allowance, expenses, or taxes, (2) when it is for the advantage, benefit, and best interests of the estate and of interested persons, or (3) when property is directed by the will to be sold. If the personal representative neglects or refuses to do so, any interested person may petition the court for an order requiring the personal representative to sell. Notice of the hearing on the petition shall be given to the personal representative by citation served at least five days before the hearing.

(b) The personal representative may sell real or personal property of the estate as provided in this chapter when authority is given in the will to sell the property whether or not the requirements of subdivision (a) are satisfied.

Comment. Section 8244 continues the substance of a portion of the second sentence of former Section 754, portions of the first and second sentences of former Section 757, and the first sentence and a portion of the second sentence of former Section 758. The reference to "taxes" has been added to Section 8244, consistent with the likely construction of former Section 754. See Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.3, at 504 (Cal. Cont. Ed. Bar 1971). See also Sections 32 ("devise" defined), 48 ("interested person" defined), 59 ("personal representative" defined).

26271

§ 8245. Discretion of personal representative

8245. (a) Subject to subdivision (b), if estate property is required or permitted to be sold pursuant to Section 8244:

(1) The personal representative may sell the property either at public auction or private sale in his or her discretion.

(2) The personal representative may use his or her discretion as to which property to sell first. In selling property to pay debts, devisees, family allowance, expenses, or taxes, there is no priority as between real and personal property.

(3) The personal representative may sell the entire interest of the estate in the property or any lesser interest or estate therein.

(b) If directions are given in the will as to the mode of selling or the particular property to be sold, such directions shall be observed.

Comment. Section 8245 continues the substance of the first sentence, a portion of the second sentence, and the third sentence of former Section 754, and a portion of the first sentence and the third sentence of former Section 757. The reference to "taxes" has been added to Section 8245, consistent with the likely construction of former Section 754. See Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.3, at 504 (Cal. Cont. Ed. Bar 1971). For the rules of abatement, see Section [8880]. See also Sections 32 ("devise" defined), 59 ("personal representative" defined).

26268

§ 8246. Sale of real and personal property as a unit

8246. (a) When the personal representative determines in his or her discretion that, by use or relationship, any assets of the estate, whether real or personal, constitute a unit for purposes of sale, the personal representative may cause the property to be appraised as a unit.

(b) Whether or not the property is appraised as a unit, the personal representative may sell all the assets described in subdivision (a) as a unit and under one bid if the court finds the sale to be for the best interests of the estate.

(c) No private sale of the assets as a unit may be made for less than 90 percent of the sum of the appraised values of the personal property and the sum of the appraised values of the real property, appraised separately, or for less than 90 percent of the appraised value if appraised as a unit.

(d) If the assets to be sold as a unit include any real property, the sale shall be made in the manner provided for the sale of real property, and the bid and sale are subject to the limitations and restrictions established for the sale of real property. If the assets to be sold as a unit are entirely personal property, the property shall be sold in the manner provided for the sale of personal property.

Comment. Section 8246 continues the substance of former Section 754.5. See also Section 59 ("personal representative" defined).

Article 2. Contract With Agent, Broker, or Auctioneer

§ 8260. Contract with agent or broker

8260. (a) The personal representative may enter into a written contract with any bona fide agent or broker, or multiple group of agents or brokers, to secure a purchaser for any real or personal property of the estate.

(b) The contract may provide for payment of a commission out of the proceeds of sale. The contract may also grant an exclusive right to sell property for a period not in excess of 90 days if prior to execution of the contract granting an exclusive right to sell the personal representative obtains permission of the court to enter into such a contract upon a showing of necessity and advantage to the estate. The court may grant such permission when the personal representative is appointed or at any subsequent time upon ex parte application.

(c) When a sale is confirmed by the court to a purchaser procured by the agent or broker making the contract, the contract is binding and valid as against the estate for such amount as the court allows pursuant to Section 8263.

Comment. Section 8260 continues the substance of the first, third, and fourth sentences of former Section 760. See also Section 59 ("personal representative" defined).

26266

§ 8261. Contract with auctioneer

8261. (a) The personal representative may enter into a written contract with any bona fide auctioneer, authorized to act as such in the locality, to conduct a public auction sale and to secure purchasers by such method for the following property:

- (1) Any tangible personal property of the estate.
- (2) Any real property of the estate.

(b) The contract may provide for payment to the auctioneer of a fee or commission out of the proceeds of sale and for reimbursement of expenses, in amounts to be determined by the court if the sale is approved. The contract may provide that tangible personal property and real property of two or more estates being administered by the same personal representative may be sold at the same public sale.

(c) Items of tangible personal property may be sold separately or in a lot with other items from the same estate.

(d) A sale pursuant to a contract described in subdivision (a) shall be with reserve.

(e) The auctioneer shall comply with the instructions of the personal representative with respect to withdrawal of items, risk of loss, place of delivery, warranties, and other matters.

Comment. Section 8261 continues the substance of the first, second, fourth, fifth, sixth, and seventh sentences of former Section 760.5. The authority to contract concerning real property is new. Former Section 760.5 was limited to tangible personal property. Since real property may be sold at public auction (see Sections 8290-8292), Section 8261 permits the personal representative to contract with an auctioneer for sale of the property. See also Section 59 ("personal representative" defined).

26265

§ 8262. No personal liability of personal representative

8262. Subject to subdivision (b) of Section 8276, no personal liability attaches to the personal representative by the execution of a contract described in Section 8260 or 8261.

Comment. Section 8262 continues the substance of a portion of the last sentence of former Section 760 and a portion of the third sentence of former Section 760.5. Under the third sentence of former Section 760.5, the rule of no personal liability was subject to the obligations of the personal representative to the purchaser of personal property as to which title passed "pursuant to Section 772" without court confirmation or approval. Former Section 772 dealt with passage of title to tangible personal property. However, Section 8276 deals with rapidly depreciating property and property sold to provide a family allowance in addition to tangible personal property. Hence, the "subject to" clause of Section 8262 is broader than the exception of former Section 760.5. See also Section 59 ("personal representative" defined).

24591

§ 8263. Compensation of agent, broker, or auctioneer

8263. (a) The estate is not liable for any fee, commission, or other compensation to the agent, broker, or auctioneer unless an actual sale is made and, if court confirmation is required, the sale is confirmed by the court.

(b) Subject to Section 8264, the compensation of an agent or broker for services to the estate shall be such reasonable amount as may be determined by the court. If the original bid is made by a purchaser direct to the estate and thereafter a bona fide agent makes an increased

bid at the confirmation hearing which results in confirmation and sale at such increased bid, the court shall allow the compensation provided by this subdivision to the agent who procured the increased bid.

(c) The compensation of an auctioneer for services to the estate shall be such reasonable amount as may be determined by the court.

(d) Notwithstanding that any bid contains a condition that a certain amount of the bid shall be paid to an agent or broker by the personal representative, only such compensation as is proper under this section shall be allowed, and acceptance of the bid by the court binds the bidder even though the compensation is less than that specified by the condition.

Comment. Subdivision (a) of Section 8263 continues the substance of the last sentence of former Section 760 and a portion of the third sentence of former Section 760.5.

Subdivision (b) continues the substance of a portion of the fourth sentence of former Section 760 (contract binding "for an amount to be allowed by the court"), all of former Section 761.5 (overbidder's agent entitled to "reasonable compensation" fixed by the court), and a portion of the second sentence of former Section 785 (overbidder's agent entitled to "reasonable compensation" fixed by the court).

Subdivision (c) continues the substance of a portion of the second sentence of former Section 760.5 (auctioneer's fee "to be determined by the court").

Subdivision (d) continues the substance of a portion of the last sentence of former Section 785 (real property), and generalizes it to apply also to sales of personal property. See also Section 59 ("personal representative" defined).

10027

§ 8264. Allocation of commission among competing agents or brokers

8264. If the court confirms a sale on an increased bid made at the time of confirmation to a purchaser not procured by the agent or broker holding the contract, the court shall allow a commission on the full amount for which the sale is confirmed, to be allocated as follows:

(a) If the successful bidder is not produced by a bona fide agent or broker, then the agent or broker holding the contract shall be allowed a full commission in the amount of the original bid returned by him or her.

(b) If the successful bidder is produced by a bona fide agent or broker, the commission shall be allocated one-half on the original bid to be paid to the agent or broker whose bid was returned to the court for confirmation, and the balance of the commission on the purchase

price to the agent or broker who procured the purchaser to whom the sale is confirmed, except that, in the case of a sale of real property, the compensation of the agent or broker who produces the successful bidder and does not hold a contract with the personal representative shall not exceed one-half of the difference between the amount of the bid in the original return and the amount of the successful bid.

Comment. Section 8264 continues the substance of former Section 761 and the fourth sentence of former Section 785 (limitation in case of real property sale). See also Review of Selected 1955 Code Legislation, at 160 (Cal. Cont. Ed. Bar 1955) (50-50 split of former Section 761 subject to one-half of the difference limit of former Section 785); Section 59 ("personal representative" defined).

16881

§ 8265. Allocation of commission among cooperating agents or brokers

8265. Subject to subdivision (b) of Section 8264, the court shall consider any agreement concerning the sharing of compensation or commission in the transaction made between the agent or broker holding the contract with the personal representative and any cooperating agent or broker whose bid is returned to the court for confirmation. The court may order that the commission or compensation be shared among such agents or brokers in such manner as the court determines is reasonable.

Comment. Section 8265 continues what appears to have been the substance of the second sentence of former Section 760. See also Section 59 ("personal representative" defined).

16882

Article 3. Sale of Personal Property

§ 8270. Notice of sale

8270. (a) Except as provided in subdivisions (b), (c), and (d), and subject to subdivision (e), personal property may be sold only after notice is given by one or both of the following methods, as the personal representative may determine:

(1) By posting at the county courthouse of the county in which the proceedings are pending, at least 10 days before the sale or, in the case of a private sale, at least 10 days before the day on or after which the sale is to be made.

(2) By publication pursuant to Section 6063a of the Government Code in a newspaper in the county in which the proceedings are pending.

(b) The following personal property may be sold with or without notice as the personal representative may determine:

- (1) Property which is required or permitted to be sold by the will.
- (2) Rapidly depreciating property.
- (3) So much personal property as may be necessary to provide a family allowance pending receipt of other sufficient funds.

(c) The notice required by subdivision (a) need not be given for sale of securities pursuant to Section 8277, or of the redemption or conversion of such securities, if any of the following conditions is satisfied:

- (1) When the minimum selling price is fixed by the court.
- (2) When the securities are to be sold on an established stock or bond exchange.
- (3) When the securities are to be surrendered for redemption or conversion.

(d) The notice required by subdivision (a) need not be given for sale of subscription rights pursuant to Section 8279.

(e) If it is shown that it will be for the best interests of the estate, the court or judge may shorten the time of notice to not less than five days. Notice shall then be posted, or published pursuant to Section 6061 of the Government Code, in the county in which the proceedings are pending, at least five days before the sale, or, in the case of a private sale, at least five days before the day on or after which the sale is to be made.

Comment. Subdivisions (a) and (c) of Section 8270 continue the substance of the first sentence of former Section 772 and a portion of the fourth sentence of former Section 771. Subdivision (b) continues the substance of the first portion of the first sentence of former Section 757 and the first portion of former Section 770.

Subdivision (d) is new. Under former Sections 771.5 and 772, it was not clear whether notice of sale of subscription rights had to be given.

Subdivision (e) continues the second sentence of former Section 772. The reference in subdivision (e) to a court "or judge" is drawn from former Section 782 (real property). For the comparable provision concerning notice of sale of real property, see Section 8290. See also Sections 59 ("personal representative" defined), 70 ("security" defined) [is this definition adequate?--see § 771], 7801 ("rapidly depreciating property" defined).

§ 8271. Contents of notice

8271. Notice given pursuant to Section 8270 shall state all of the following:

- (a) A brief description of the property to be sold.
- (b) Whether the sale is to be a private sale or a public auction sale.
- (c) In case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made, or, in case of a public auction sale, the time and place of sale.

Comment. Section 8271 continues the substance of the third sentence and a portion of the fourth sentence of former Section 772. For the comparable provision concerning contents of a notice of sale of real property, see Section 8291.

15326

§ 8272. Sales at public auction

8272. (a) Sales of personal property at public auction shall be made at the courthouse door, at some other public place, or at the residence of the decedent.

(b) Unless the court orders otherwise, no public auction sale shall be made of any personal property which is not present at the time of sale.

(c) The personal representative may postpone a public auction sale of personal property from time to time if all of the following conditions are satisfied:

- (1) The personal representative deems the postponement to be in the interest of all persons concerned.
- (2) Notice of the postponement is given by public declaration at the time and place appointed for the sale.
- (3) The postponement, together with previous postponements of sale of the property, does not exceed three months in all.

Comment. Section 8272 continues the substance of the fifth, sixth, and seventh sentences of former Section 772. For the provision concerning passage of title without court confirmation of tangible personal property sold at public auction, see Section 8275. For the comparable provision concerning sales of real property at public auction, see Section 8292. See also Section 59 ("personal representative" defined).

§ 8273. Private sales

8273. Private sales of personal property may not be made before the date stated in the notice of sale on or after which the sale will be made, nor later than one year after that date.

Comment. Section 8273 continues the substance of a portion of the fourth sentence of former Section 772. For the comparable provision concerning private sales of real property, see Section 8293.

14917

§ 8274. Terms of sale

8274. (a) personal property may be sold for cash or on credit.

(b) Except as may otherwise be ordered by the court pursuant to Section 8275, if a sale is made on credit, not less than 25 percent of the purchase price shall be paid in cash at the time of sale, and the personal representative shall do one of the following:

(1) Take the note of the purchaser for the balance of the purchase money, with a pledge or chattel mortgage of the personal property sold, to secure the payment of the balance.

(2) Enter into a conditional sale contract under which title is retained until the balance is paid.

(3) The terms of the note and pledge, chattel mortgage, or contract shall be approved by the court at the time of confirmation of sale.

(d) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in real property or any other interest therein less than the entire ownership, and the owner or owners of the remaining interests therein join in the sale, the pledge or chattel mortgage may be made to the personal representative and such others having an interest in the property. The interest of the personal representative in the pledge or chattel mortgage shall be in the same tenancy and in the same proportions as the estate's interest in the property prior to the sale.

Comment. Subdivisions (a), (b), and (c) of Section 8274 continue the substance of the first, second, third, and fourth sentences of former Section 773. Concerning the requirement that 25 percent of the purchase price shall be paid in cash at the time of sale, see Consolidated Copperstate Lines v. Frasher, 141 Cal. App.2d 916, 297 P.2d 692 (1956).

Subdivision (d) continues the substance of the second and third sentences of former Section 787 as it applied to personal property. See

also Sections 8302 (credit sales of real property), 59 ("personal representative" defined).

15325

§ 8275. Court order relaxing sales terms

8275. (a) On petition of the personal representative, the court may by order authorize a sale on credit on terms providing for less than 25 percent of the purchase price to be paid in cash at the time of sale, or may waive or modify the requirement that a lien or other security interest shall be retained or taken to secure payment of the balance of the purchase price, when in the opinion of the court the terms are for the best interests of the estate and the property to be sold is of such a nature that it is impracticable to sell the property for a larger cash payment at the time of sale, or to retain a lien or other security interest in the property. The order of the court shall fix the terms and conditions of the sale.

(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]. In addition, notice of the hearing shall be given by mail at least 10 days prior to the hearing to all heirs and devisees named in the petition for probate of the will or for letters of administration.

Comment. Section 8275 continues the substance of the fifth, sixth, seventh, and eighth sentences of former Section 773. Section 8275 permits the court to vary the requirements of Section 8273 where it is impractical to meet those requirements, such as in the sale of an insurance business, a liquor license, the goodwill of a business, or the stock in trade of a merchant. 36 St. B.J. 829-30 (1961). See also Sections 34 ("devisee" defined), 59 ("personal representative" defined).

15625

§ 8276. Passage of title without court confirmation

8276. (a) Title to the following personal property passes upon sale without the need for court confirmation:

- (a) Rapidly depreciating property.
- (2) Property necessary to provide a family allowance pending receipt of other sufficient funds.
- (3) Tangible personal property sold at a public auction.

(b) The personal representative is responsible for the actual value of the property described in subdivision (a) unless the personal repre-

sentative makes a sworn return and a proper showing and the court approves the sale.

Comment. Section 8276 continues the substance of former Section 770 and the last sentence of former Section 772. See also Sections 59 ("personal representative" defined), 8242 ("rapidly depreciating property" defined).

15123

§ 8277. Prior court approval of sale of securities

8277. (a) As used in this section, "securities" means "security" as defined in Section 70, land trust certificates, certificates of beneficial interest in trusts, investment trust certificates, mortgage participation certificates, or certificates of deposit for any of the foregoing, but does not include notes secured by a mortgage or deed of trust unless the note or notes have been authorized or permitted to be issued by the Commissioner of Corporations or have been made by a public utility subject to the Public Utilities Act.

(b) Upon obtaining a prior order of the court, securities may be sold, or surrendered for redemption or conversion, and title thereto passed without the need for subsequent court confirmation. The court's order shall fix the terms and conditions of sale.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in [Sections 1200 and 1200.5], but the court may order that the notice required by [Section 1200.5] be given for a shorter period or dispensed with.

Comment. Section 8277 continues the substance of the first two paragraphs of former Section 771, except that the last portion of the fourth sentence of former Section 771 is continued in subdivision (c) of Section 8270. See also Section 8278 (sale of savings accounts, mutual capital certificates, and net worth certificates without court order).

16971

§ 8278. Savings and loan transactions without court order

8278. (a) As used in this section:

(1) "Federal association" has the same meaning as defined in Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the same meaning as defined in Section 5111 of the Financial Code.

(3) "Net worth certificate" has the same meaning as defined in Section 5112 of the Financial Code.

(4) "Savings account" has the same meaning as defined in Section 5116 of the Financial Code.

(5) "Savings association" has the same meaning as defined in Section 5102 of the Financial Code.

(6) "Withdrawal value" has the same meaning as defined in Section 5124 of the Financial Code.

(b) Notwithstanding Section 8277, savings accounts, mutual capital certificates, and net worth certificates of a savings association or federal association may be sold or surrendered for withdrawal, and title thereto passed, without notice, prior order of court, or subsequent confirmation by the court, if an amount of money is obtained upon such sale or withdrawal not less than the withdrawal value of the savings account or the value of the mutual capital certificate or net worth certificate.

Comment. Section 8278 continues the substance of the last paragraph of former Section 771, except that the former provisions have been revised to reflect the revision of the Financial Code provisions made by Chapter 1091 of the Statutes of 1983.

18317

§ 8279. Sale of subscription rights without court order

8279. Notwithstanding Section 8277, if an estate by reason of owning stocks, bonds, or other securities, also owns or receives subscription rights for the purchase of additional securities, the personal representative may sell all or part of the subscription rights without prior order of court or subsequent confirmation by the court.

Comment. Section 8279 continues the substance of former Section 771.5. Notice of sale of subscription rights is not required. Section 8270(d). See also Section 59 ("personal representative" defined).

16961

§ 8280. Necessity of court confirmation of sale

8280. (a) Except as provided in Sections 8275 to 8278, inclusive, all sales of personal property shall be reported to and confirmed by the court before title to the property passes.

(b) The report and a petition for confirmation of the sale shall be made within 30 days after each sale. The report shall be verified.

(c) 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 8280 continues the substance of former Section 755 as it applied to personal property, except that the former provision that the clerk shall set the petition for hearing by the court is continued in Section 7142. For the comparable provision concerning necessity of court confirmation of sale of real property, see Section 8294.

16875

§ 8281. Confirmation hearing

8281. (a) If notice of the sale is required by Section 8270, it must be proved to the satisfaction of the court that notice of the sale was given as provided in that section.

(b) Except as provided in this subdivision, the court shall examine into the necessity for the sale or the advantage, benefit, and interest of the estate in having the sale made. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or advantage, benefit, and interest of the estate or interested persons in having the sale made.

(c) The court shall examine the report of sale and witnesses in relation to the sale.

(d) Any interested person may file written objections to the confirmation of the sale, may be heard thereon, and may produce witnesses in support of the objections.

(e) Before confirming the sale of a partnership interest, whether made to the surviving partner or to any other person, the court shall inquire into the condition of the partnership affairs, and shall examine the surviving partner if the surviving partner is in the county and able to be present in court.

Comment. Subdivision (a) of Section 8281 continues a portion of the last sentence of former Section 756 as it applied to personal property.

Subdivision (b) is new. The first sentence is drawn from a portion of the first sentence of former Section 785 (real property). Section 8244 provides that real or personal property of the estate shall be sold (1) when necessary to pay debts, devise, family allowance, expenses, or taxes, (2) when it is for the advantage, benefit, and best interests of the estate and of interested persons, or (3) when property is directed by the will to be sold. The second sentence of subdivision (b) is drawn from a portion of the second sentence of former Section 757 (real property). Section 8244 provides that real or personal property of the estate may be sold without further showing of necessity or advantage when the will authorizes the sale.

Subdivision (c) is new and is drawn from a portion of the first sentence of former Section 785 (real property). The report of sale of personal property is required by Section 8280.

Subdivision (d) continues the first sentence of former Section 756. Subdivision (e) continues the second sentence of former Section 774.

Unlike the statutes governing the sale of real property (see Sections 8295, 8298), those for sale of personal property do not require that the purchase price of the property bear any relation to its value. Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.56, at 542 (Cal. Cont. Ed. Bar 1971).

For the comparable provision concerning confirmation hearing on sale of real property, see Section 8296. See also Section 48 ("interested person" defined).

405/421

§ 8282. Overbid

8282. (a) If at the hearing for confirmation of sale a written offer of 10 percent more in amount than that stated in the report is made to the court, the court may in its discretion accept the offer and confirm the sale to the offeror, or may order a new sale, if all of the following conditions are satisfied:

- (1) The original bid as stated in the report was more than \$100.
- (2) The new bid is made by a responsible person.
- (3) The new bid complies with all provisions of law.

(b) This section does not apply to property sold without notice as provided in Section 8270 or to property sold at public auction.

Comment. Section 8282 continues the substance of former Section 756.5. Unlike the statutes governing the sale of real property (see Sections 8295, 8298), those for sale of personal property do not require that the purchase price of the property bear any relation to its value. Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.56, at 542 (Cal. Cont. Ed. Bar 1971). For the comparable provision concerning overbid on sale of real property, see Section 8297.

405/447

§ 8283. Order to show proof of notice

8283. If notice of the sale is required by Section 8270, the court's order of confirmation shall show that proof of notice was made.

Comment. Section 8283 continues the substance of a portion of the last sentence of former Section 756 as it applied to personal property. For the comparable provision for real property, see Section 8298(c).

Article 4. Sale of Real Property

§ 8290. Notice of sale

8290. (a) Except as provided in this section, notice of sale of real property must be published pursuant to Section 6063a of the Government Code in a newspaper published in the county in which the property or some portion thereof lies, or, if there is no such newspaper, then in such newspaper as the court or judge may direct. Publication shall be completed prior to the day of public auction, or, in the case of a private sale, prior to the day specified in the notice on or after which the sale is to be made.

(b) If it is shown that it will be for the best interests of the estate, the court or judge may shorten the time of notice required by subdivision (a) to one week. Notice must then be given by one of the following methods as the court may direct:

(1) Published pursuant to Section 6061 of the Government Code.

(2) In the case of a public auction sale, posted for one week prior to the date of the sale.

(3) In the case of a private sale, prior to the day on or after which the sale is to be made.

(c) If it appears from the inventory and appraisement that the value of the property to be sold does not exceed one thousand dollars (\$1,000), the personal representative may in his or her discretion dispense with publication, and in lieu of publication post a notice of the time and place of sale at the courthouse of the county in which the land or some portion thereof lies. Posting pursuant to this subdivision shall be for 10 days prior to the public auction, or, in the case of a private sale, for 10 days prior to the day specified in the notice of sale on or after which the sale is to be made.

(d) When real property is required or permitted by the will to be sold, the personal representative may sell the property with or without notice as he or she may determine.

Comment. Subdivision (a) of Section 8290 continues the substance of the first sentence of former Section 780, except that the requirement that the notice state the "time and place" of sale is continued in Section 8291. Subdivision (b) continues the substance of the last portion of the first sentence of former Section 782, except that the former language "and otherwise in accordance with Section 780 of this code" is omitted.

Subdivision (c) continues the substance of the second sentence of former Section 780. Subdivision (d) continues the substance of a portion of the first sentence of former Section 757 as it applied to real property. Under subdivision (d), it is not necessary that the will specifically grant the personal representative authority to sell without notice. If the will directs or authorizes the sale, whether or not notice should be given is within the discretion of the personal representative. See *Bagley v. Bloom*, 19 Cal. App. 255, 271, 125 P. 931 (1912). Contra Los Angeles County Probate Policy Memorandum § 12.02, in California Local Probate Rules (4th ed., Cal. Cont. Ed. Bar 1983) (unless will specifically grants executor authority to sell without notice, notice of sale of real property is required).

For the comparable provision concerning notice of sale of personal property, see Section 8270. See also Section 59 ("personal representative" defined).

10910

§ 8291. Contents of notice

8291. (a) Notice given pursuant to Section 8290 shall state all of the following:

- (1) Whether the sale is to be a private or public auction sale.
- (2) In the case of a private sale, the place at which bids or offers will be received and a day on or after which the sale will be made, or in the case of a public auction sale, the time and place of sale.

(3) A legal description of the property.

(b) In addition to the matters required by subdivision (a), the notice should also describe the property by giving its street address, if any, or other common designation, if any. If a legal description of the property is given, the validity of the notice is not affected by the fact that the street address or other common designation recited is erroneous or is omitted.

Comment. Section 8291 continues the substance of a portion of the first sentence and all of the third and fourth sentences of former Section 780 and a portion of the first sentence of former Section 782. The requirement of paragraph (3) of subdivision (a) that the notice contain a legal description of the property replaces the former requirement that the property be described with particularity. The former requirement was understood to require a legal description, either by metes and bounds or by lot and block number. See *Hudner, Sales of Estate Property*, in 1 California Decedent Estate Administration § 14.23, at 515 (Cal. Cont. Ed. Bar 1971).

For the comparable provision concerning contents of a notice of sale of personal property, see Section 8271.

§ 8292. Sales at public auction

8292. (a) Sales of real property at public auction must be made in the county in which the property lies. If the property lies in two or more counties, it may be sold in any one of them.

(b) Sales at public auction must be made between the hours of 9 o'clock in the morning and the setting of the sun on the same day, and must be made on the day specified in the notice of sale, unless the sale is postponed.

(c) If at the time appointed for the sale, the personal representative deems it for the interest of all persons concerned that the sale be postponed, the personal representative may postpone the sale from time to time, not exceeding three months in all. Notice of the postponement must be given by public declaration at the time and place first appointed for the sale.

Comment. Subdivisions (a) and (b) of Section 8292 continue the substance of former Section 781. Subdivision (c) continues the substance of former Section 783. For the comparable provision concerning sales of personal property at public auction, see Section 8272. See also Section 59 ("personal representative" defined); Estate of Hunter, 194 Cal. App.2d 859, 863-64, 15 Cal. Rptr. 556 (1961) (former Section 783 applied to public auction sales but not to private sales).

10363

§ 8293. Private sales

8293. (a) Private sales of real property may not be made before the date stated in the notice of sale on or after which the sale will be made, nor later than one year after that date.

(b) In the case of a private sale of real property, bids or offers must be in writing and may be made at any time after the first publication or posting of notice and before the making of the sale by any of the following methods:

- (1) Left at the place designated in the notice.
- (2) Delivered to the personal representative personally.
- (3) Filed in the office of the clerk of the court where the estate proceedings are pending.

Comment. Section 8293 continues the substance of a portion of the first sentence and all of the second sentence of former Section 782. For the comparable provision concerning private sales of personal property, see Section 8273. See also Section 59 ("personal representative" defined).

§ 8294. Necessity of court confirmation of sale

8294. (a) All sales of real property shall be reported to and confirmed by the court, whether the sale is private or at public auction, and whether the sale is made pursuant to an authorization or direction in the testator's will. Title to the property does not pass to the purchaser until the sale is confirmed by the court.

(b) A report and petition for confirmation of sale shall be filed within 30 days after each sale. The report shall be verified.

(c) 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 8294 continues the substance of former Section 755 as it applied to real property, except that the former provision that the clerk shall set the petition for hearing by the court is continued in Section 7142. The language in subdivision (a) that confirmation is required whether the sale is public or private and whether made pursuant to a will is new, but continues the effect of former Section 755. See 1 H. Miller & M. Starr, Current Law of California Real Estate § 2:49, at 296 (rev. ed. 1975). For the comparable provision concerning necessity of court confirmation of sale of personal property, see Section 8280.

7920

§ 8295. Minimum price for private sales of real property

8295. (a) Except as provided in Section 8300, no sale of real property at private sale shall be confirmed by the court unless both of the following conditions are satisfied:

(1) The real property has been appraised with a valuation date within one year of the date of sale.

(2) The sum offered for the property is at least 90 percent of the appraised value of the property within one year prior to the date of sale.

(b) A new appraisal of the property may be had at any time before the sale or the confirmation of sale in the following cases:

(1) If the property has not been previously appraised.

(2) If the valuation date of a previous appraisal was more than one year before the date of sale.

(3) If it appears to the court that a previous appraisal is too high or too low.

(c) If a new appraisal is made pursuant to subdivision (b), the appraisal may be made by the referee who made the original appraisal-

ment without further order of the court or further request for the appointment of a new referee. In case of death, removal, or other disability to act of the original referee, or if for just cause a new referee is to be appointed, proceedings for the appointment shall be had as in the case of an original appraisalment of the estate.

Comment. Section 8295 continues the substance of former Section 784. The "except" clause of subdivision (a) continues the effect of the "notwithstanding" clause of subdivision (b) of former Section 794.

Section 8295 refers to the "valuation date" of the appraisalment, rather than to the date the appraisalment was made. This was the intent of former Section 784, pursuant to which an appraisalment was deemed to relate back to the valuation date. See 1 A. Marshall, California Probate Procedure § 1403, at 200 (4th ed. 1984).

All sales of real property must be confirmed by the court, whether the sale is private or at public auction (Section 8294), and all sales must be for a sum not disproportionate to the value of the property (Section 8298). However, the requirement of Section 8295 that the offer be at least 90 percent of the appraised value applies only to private sales. As under prior law, the 90 percent requirement does not apply to sales made at public auction. 1 A. Marshall, supra, § 1407, at 204; 1 H. Miller & M. Starr, Current Law of California Real Estate § 2:49, at 296 n.19 (rev. ed. 1975). See also Section 8246 (sale of real and personal property as a unit).

8132

§ 8296. Confirmation hearing

8296. (a) If notice of the sale is required by Section 8290, it must be proved to the satisfaction of the court that notice of the sale was given as provided in that section.

(b) Except as provided in this subdivision, the court shall examine into the necessity for the sale or the advantage, benefit, and interest of the estate in having the sale made. If the decedent's will authorizes or directs the property to be sold, there need be no showing of the necessity of the sale or advantage, benefit, and interest of the estate or interested persons in having the sale made.

(c) The court shall examine into the efforts of the personal representative to expose the property to the market.

(d) The court shall examine the report of sale and witnesses in relation to the sale.

(e) Any interested person may file written objections to the confirmation of the sale, may be heard thereon, and may produce witnesses in support of the objections.

Comment. Subdivision (a) of Section 8296 continues a portion of the last sentence of former Section 756 as it applied to real property. The first sentence of subdivision (b) continues the substance of a portion of the first sentence of former Section 785. The second sentence of subdivision (b) continues the substance of a portion of the second sentence of former Section 757.

Subdivisions (c) and (d) continue a portion of the first sentence of former Section 785.

Subdivision (e) continues the substance of the first sentence of former Section 756 as it applied to real property.

For the comparable provision concerning confirmation hearing on sale of personal property, see Section 8281. See also Sections 48 ("interested person" defined), 59 ("personal representative" defined).

7922

§ 8297. Overbid

8297. (a) Subject to subdivisions (b) and (c), if a written offer to buy the property in an amount at least 10 percent more on the first ten thousand dollars (\$10,000) of the original bid and 5 percent more on the amount of the original bid in excess of ten thousand dollars (\$10,000), exclusive of the expenses of a new sale, is made to the court by a responsible person and the offer complies with all provisions of law, the court shall accept the offer. If there is more than one such offer, the court shall accept the highest such offer. For the purpose of this paragraph, the amount of the original bid and any higher offer shall be determined by the court without regard to any commission on the bid to which an agent or broker may be entitled under a contract with the personal representative, and without regard to any condition of the bid that a certain amount of the bid be paid to an agent or broker by the personal representative.

(b) The court may, in its discretion, decline to accept an offer that satisfies subdivision (a), and in such case shall order a new sale.

(c) If the sale returned for confirmation is on credit and the higher offer is for cash or on credit, or the sale returned for confirmation is for cash and the higher offer is on credit, the court may not consider the higher offer unless the personal representative informs the court in person or by counsel prior to confirmation of sale that the higher offer is acceptable.

Comment. Subdivisions (a) and (b) of Section 8297 continue the substance of portions of the second, third, and sixth sentences, and all of the fifth sentence, of former Section 785. As under prior law, the overbid procedure applies both to private sales and to public auction

sales. See 1 H. Miller & M. Starr, Current Law of California Real Estate § 2:48, at 294 (rev. ed. 1975).

Subdivision (c) continues the substance of former Section 785.1.

For the comparable provision concerning overbid on sale of personal property, see Section 8282. See also Section 59 ("personal representative" defined).

[Note. Subdivision (c) continues the substance of former Section 785.1. The latter section apparently was enacted to deal with the problem created by some courts taking the position that if the original bid was for credit and the overbid was for cash, then all subsequent increased bids also had to be for cash. 3 Pac. L.J. 206 (1972). If so, the provisions appear poorly drafted to deal with that specific problem.]

2960

§ 8298. Order confirming or vacating sale

8298. (a) The court shall make an order confirming the sale to the person making the highest offer that satisfies the requirements of this article, and directing conveyances to be executed, if it appears to the court that all of the following requirements are satisfied:

(1) Either the sale was authorized or directed to be made by the decedent's will or good reason existed for the sale.

(2) If notice of sale is required by Section 8290, that the notice was given.

(3) The sale was legally made and fairly conducted.

(4) The amount bid is not disproportionate to the value of the property.

(5) In the case of a private sale, the sale complied with the requirements of Section 8295.

(6) If the sale is confirmed to the original bidder, it does not appear that a higher bid that satisfies the requirements of Section 8297 may be obtained.

(7) If a bond is required by Section 8299, the bond has been furnished.

(b) The court shall fix the compensation of the agent or broker as provided in Article 2 (commencing with Section 8260).

(c) If notice of the sale is required by Section 8290, the court's order of confirmation shall show that proof of notice was made.

(d) If it appears to the court that the requirements of subdivision (a) are not satisfied, the court shall vacate the sale and order a new sale. In such case, notice shall be given and the new sale shall in all respects be conducted as if no previous sale had taken place.

Comment. Subdivisions (a) and (d) of Section 8298 continue the substance of portions of the first and second sentences of former Section 785 and a portion of the first sentence of former Section 801. Paragraph (1) of subdivision (a) recognizes that it is not necessary to show that good reason existed for the sale if the sale was authorized or directed by the decedent's will. This continues a portion of the second sentence of former Section 757 as it applied to real property. Paragraph (5) recognizes that the 90 percent requirement of Section 8295 applies only to private sales, and not to public auction sales. This continues a portion of the first sentence of former Section 784. See 1 A. Marshall, California Probate Procedure § 1407, at 204 (4th ed. 1984); 1 H. Miller & M. Starr, Current Law of California Real Estate § 2:49, at 296 n.19 (rev. ed. 1975).

Subdivision (b) continues the substance of portions of the second and third sentences of former Section 785.

Subdivision (c) continues the substance of a portion of the last sentence of former Section 756 as it applied to real property. For the comparable provision for personal property, see Section 8283.

7901

§ 8299. Sale of decedent's contract right to purchase real property; bond

8299. (a) If the decedent at the time of death was possessed of a contract for the purchase of real property and the decedent's interest is sold pursuant to this chapter, the sale must be made subject to all payments which are due at the time of sale or which may thereafter become due on the contract.

(b) Except as provided in subdivision (c), if there are any such payments due or to become due, the sale must not be confirmed by the court until the purchaser executes a bond to the personal representative for the benefit and indemnity of the personal representative and the persons entitled to the interest of the decedent in the real property contracted for. The bond shall be in an amount equal to the amount of payments then due and thereafter to become due on the contract, with such sureties as the court or judge may approve. The bond shall be conditioned that the purchaser will make all payments for the property which are then due or which become due after the date of the sale, and will fully indemnify the personal representative and the person entitled to the interest of the decedent against all demands, costs, charges, and expenses, by reason of any covenant or agreement contained in the contract.

(c) The bond need not be given in either of the following cases:

(1) When no claim has been made against the estate on the contract and the time for filing or presenting claims has expired.

(2) When the person entitled to payment under the contract waives all recourse to the assets of the estate for such payment and releases the estate and the personal representative from liability therefor.

Comment. Section 8299 continues the substance of a portion of former Section 800 and all of former Section 801. See also Sections 59 ("personal representative" defined), 8243 ("real property" includes decedent's interest under contract to purchase real property).

9921

§ 8300. Land suitable for grazing or pasture

8300. (a) The personal representative may sell real property suitable for a shift-in-land-use loan to develop grazing or pasture facilities to a grazing or pasture association in conformity with the federal Consolidated Farm and Rural Development Act, 7 U.S.C. Sections 1921 et seq., if both of the following conditions are satisfied:

(1) The sale is made pursuant to the will of the decedent, or all the decedent's heirs or devisees consent to the sale.

(2) The court determines that the sale will not jeopardize the rights of creditors of the estate.

(b) Except as provided in this section, a sale made pursuant to this section shall be made in the same manner as other sales of real property, including notice of the time and place of sale and court confirmation of sale.

(c) The price of a sale made pursuant to this section shall be not less than the value of the land as established by an independent and competent appraiser mutually acceptable to the federal government, the grazing or pasture association, and the personal representative. The sale may be made irrespective of whether a higher bid is made to the court at the confirmation hearing.

Comment. Section 8300 continues the substance of subdivision (b) of former Section 794. See also Section 59 ("personal representative" defined).

9922

§ 8301. Conveyance or assignment after confirmation

8301. (a) Except as provided in subdivision (b), upon confirmation of the sale, the personal representative shall execute a conveyance to the purchaser which shall refer to the order confirming the sale and

directing the conveyance to be executed. A certified copy of the order shall be recorded in the office of the recorder of the county in which the land or any portion thereof lies.

(b) Upon confirmation of a sale of the decedent's interest under a contract for the purchase of real property by the decedent, the personal representative shall execute an assignment of the contract to the purchaser.

(c) A conveyance or assignment made pursuant to this section conveys and vests in the purchaser all the right, title, and interest of the estate, or of the persons otherwise entitled to the interest of the decedent, at the time of sale. The purchaser of the decedent's interest under a contract for the purchase of real property by the decedent has the same rights and remedies against the vendor of the property as the decedent would have had if living.

Comment. Section 8301 continues the substance of former Sections 786 and 802. The language of subdivision (c) that a conveyance passes the interest of the estate "at the time of sale" is drawn from former Section 802, and replaces the language of former Section 786 that it passes the decedent's interest "at the time of his death; and if prior to the sale, by operation of law or otherwise, the estate has acquired any right, title, or interest in the premises, other than or in addition to that of the decedent at the time of his death, such right, title, or interest also passes by such conveyances." This change is nonsubstantive. See also Section 59 ("personal representative" defined).

[Note. For provisions similar to subdivision (c), see proposed Section 7644 (notes, mortgages, conveyances, and exchanges--attached to Memorandum 85-13) and existing Section 2551 (guardianship-conservatorship). See also proposed Section 7628 (Memorandum 85-13). Should these provisions be consolidated in a general provision?]

9925

§ 8302. Sales on credit

8302. (a) If a sale is made on credit, the personal representative must take the note or notes of the purchaser for the unpaid portion of the purchase money, with a mortgage or deed of trust on the property to secure their payment. The mortgage or deed of trust shall be subject only to encumbrances existing at the date of sale and such other encumbrances as the court may approve.

(b) Where property sold by the personal representative for part cash and part deferred payments consists of an undivided interest in real property or any other interest therein less than the entire ownership, and the owner or owners of the remaining interests therein join in the sale, the note and deed of trust or mortgage may be made to the personal

representative and such others having an interest in the property. The interest of the personal representative in the note and deed of trust or mortgage shall be in the same tenancy and in the same proportions as the estate's interest in the property prior to the sale.

Comment. Section 8303 continues the substance of former Section 787 as it applied to real property. See also Sections 59 ("personal representative" defined), 8273 (sale of personal property on credit).

9949

Article 5. Vacating Sale for Purchaser's Default

§ 8310. Order vacating sale and directing resale

8310. (a) If after court confirmation of sale of real or personal property the purchaser neglects or refuses to comply with the terms of sale, the court may, on petition of the personal representative, vacate the order of confirmation and order a resale of the property.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser in the manner directed by the court, except that notice need not be given to the defaulting purchaser if his or her written consent to the vacation of the order confirming sale to him or her is filed with the court prior to the hearing.

(c) Notice of the resale of real property shall be given as provided in Section 8290. Notice of the resale of personal property shall be given for the period and in the manner provided in [Sections 1200 and 1200.5]

(d) Proceedings after notice of the resale shall be in the manner provided in this chapter for a sale of the property in the first instance.

(e) If the amount realized on the resale does not cover the bid and expenses of the previous sale, the defaulting purchaser at the previous sale is liable to the estate for the deficiency.

Comment. Section 8310 continues the substance of former Sections 775 and 788. Section 8310 requires a "petition," while former Section 775 and 788 required a "motion." This change is nonsubstantive. The provision in subdivision (b) that notice need not be given to a defaulting purchaser who has filed a written consent is new and is drawn from former Sections 776 and 789. See also Section 59 ("personal representative" defined).

[Note. It seems difficult to justify the more efficacious notice on resale of personal property under subdivision (c) of this section than the notice on an original sale under Section 7850.]

§ 8311. Order vacating sale and confirming sale to new high bidder

8311. (a) If a sale of real or personal property has not been vacated pursuant to Section 8310 and a petition is filed within 45 days after confirmation of sale showing that the purchaser has failed to complete the purchase and that a bid has been made for the property in the same or a higher amount, on the same or better terms, and in the manner prescribed in the original notice, the court may vacate the order of confirmation and make an order confirming the sale to the new high bidder.

(b) Notice of the hearing on the petition shall be given to the defaulting purchaser in the manner directed by the court, except that notice need not be given to the defaulting purchaser if his or her written consent to the vacation of the order confirming the sale to him or her is filed with the court prior to the hearing.

(c) If the report and petition for confirmation of the second sale are not filed within 45 days of the confirmation of the first sale, the property may be resold only in the manner provided in Section 8310.

Comment. Section 8311 continues the substance of former Sections 776 and 789.

7909

Article 6. Application of Sale Proceeds of Encumbered Property

§ 8320. Definitions

8320. As used in this article:

(a) "Lien" includes a mortgage or deed of trust.

(b) "Lienholder" means the holder of a lien on real or personal property of the estate.

(c) "Secured debt" means a debt secured by a lien on real or personal property of the estate.

Comment. Section 8320 is new and is included for convenience in drafting.

7908

§ 8321. Application of sale proceeds of encumbered property

8321. (a) When real or personal property is sold which is subject to a secured debt which is a valid claim against the estate and which has been allowed, the purchase money shall, after payment of necessary

expenses of sale, be applied without delay to the payment and satisfaction of the debt. The property sold remains subject to the lien until the purchase money has been actually so applied, or until the purchase money has been paid to the clerk as provided in subdivision (b).

(b) The purchase money, or so much thereof as may be sufficient to pay the secured debt, with interest and lawful costs and charges, may be paid to the clerk of the court. Upon such payment, the lien on the property shall cease. The clerk shall pay over the purchase money without delay to be applied to expenses of sale and to satisfy the secured debt and, unless the court for good cause and after notice to the personal representative otherwise directs, shall promptly return any surplus to the personal representative.

(c) Any surplus after payment of expenses of sale and payment of the lien shall be used in due course of administration.

Comment. Section 8321 continues the substance of former Sections 762 and 763. See also Sections 59 ("personal representative" defined); 8320 ("lien" and "secured debt" defined).

7907

§ 8322. Sale to lienholder

8322. (a) A lienholder may become the purchaser of the property subject to the lien, even though no claim on the secured debt has been, or could have been, presented or allowed.

(b) If the lienholder becomes the purchaser of the property and no claim on the secured debt has been presented or allowed, the court may at the confirmation hearing examine into the validity and enforceability of the lien and the amount of the secured debt. The court may authorize the personal representative to accept the receipt of the lienholder for the amount of the secured debt as payment pro tanto.

(c) If the lienholder becomes the purchaser of the property and the secured debt is a valid claim against the estate and has been allowed, the receipt of the lienholder for the amount due from the proceeds of sale is a payment pro tanto.

(d) If the lienholder becomes the purchaser of the property and the proceeds of sale are insufficient to cover the necessary expenses of sale and to discharge the lien, whether or not a claim has been presented

or allowed, the lienholder shall pay to the clerk of the court an amount sufficient to cover the necessary expenses of sale.

(e) Nothing permitted under this section shall be deemed to be an allowance of a claim based upon the secured debt or lien.

Comment. Section 8322 continues the substance of former Section 764. See also Sections 59 ("personal representative" defined), 8320 ("lien," "lienholder," and "secured debt" defined).

7906

Article 7. Damages and Recovery of Property

§ 8330. Neglect or misconduct of personal representative

8330. If there is any neglect or misconduct in the proceedings of the personal representative in relation to any sale by which any interested person suffers damage, the party aggrieved may recover the damage by enforcing the liability on the bond of the personal representative, or otherwise.

Comment. Section 8330 continues the substance of former Section 759. See also Sections 48 ("interested person" defined), 59 ("personal representative" defined), 8331 (double damages for fraudulent sale of real property).

7905

§ 8331. Fraudulent sale

8331. A personal representative who fraudulently sells any real property of a decedent contrary to or otherwise than under the provisions of this chapter is liable in double the value of the land sold, as liquidated damages. Such damages may be recovered in an action by the person having an estate of inheritance in the real property.

Comment. Section 8331 continues the substance of former Section 792. See also Sections 59 ("personal representative" defined), 8330 (neglect or misconduct of personal representative).

7904

§ 8332. Limitation of actions for recovery of property

8332. (a) Except as provided in subdivision (b), no action for the recovery of any property sold by a personal representative on the claim that the sale is void can be maintained by any heir or other person claiming under the decedent unless it is commenced within three years

after the settlement of the final account of the personal representative or within three years after the discovery of any fraud upon which the action is based.

(b) Minors or others under a legal disability to sue at the time the right of action accrues may commence an action for recovery of the property within three years after removal of the disability.

Comment. Section 8332 continues the substance of former Section 793. See also Section 59 ("personal representative" defined).

[Note. Although this section applies to the recovery of "property" without express limitation to real property, all the annotations under Section 793 concern actions to recover real property.]

4648

PART 10. DISTRIBUTION AND DISCHARGE

CHAPTER 7. ABATEMENT, INTEREST, AND INCOME

Article 2. Abatement

§ 8880. Abatement

8880. (a) Shares of distributees abate as provided in this section for all purposes, including payment of the testator's debts, expenses of administration, family allowance, and devises under the testator's will, and without any preference or priority as between real and personal property.

(b) Except as provided in subdivision (d), shares of distributees abate in the following order:

- (1) Property not disposed of by the will.
- (2) Residuary devises to persons not related to the testator.
- (3) Residuary devises to the testator's spouse or kindred.
- (4) General devises to persons not related to the testator.
- (5) General devises to the testator's spouse or kindred.
- (6) Specific devises to persons not related to the testator.
- (7) Specific devises to the testator's spouse or kindred.

(c) For the purpose of subdivision (b), annuities and demonstrative devises have the priority of specific devises to the extent of the value of the property or funds from which they are to be taken or paid, and, upon the failure or insufficiency of the property or fund, have the priority of general devises to the extent of the failure or insufficiency.

(d) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subdivision (b), the shares of the distributees abate as the court determines is necessary to give effect to the intention of the testator.

(e) Except as provided in subdivision (f), if a specific devise fails, resort cannot be had to other property of the testator.

(f) If the subject of a preferred devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

Comment. Subdivision (a) of Section 8880 continues the substance of a portion of the first sentence of former Section 750 and a portion of the introductory clause of former Section 751. The provision that there is no preference or priority as between real and personal property is drawn from Section 3-902 of the Uniform Probate Code and is consistent with the first sentence of former Section 754 and with California case law. See In re Estate of Woodworth, 31 Cal. 595, 614 (1867).

Subdivision (b) supersedes the second sentence of former Section 750, former Section 751, and former Section 752. The provision of former Section 750 that specific and general devises are proportionately liable for debts, expenses of administration, and family allowance unless the court exempts specific devises to carry out the intention of the testator, is superseded by the new rule under Section 8880 that specific devises abate only after general devises have abated unless the court imposes proportional liability to carry out the intention of the testator. The preference within each class of devise (residuary, general, specific) for the spouse and kindred of the testator is consistent with former Section 752. See Estate of Buck, 32 Cal.2d. 372, 376, 196 P.2d 769 (1948).

Subdivision (c) is drawn from the second sentence of subdivision (a) of Section 3-902 of the Uniform Probate Code and is consistent with subdivision (c) of former Section 662. See also Section 8130 (purchase of annuity by personal representative).

Subdivision (d) is drawn from subdivision (b) of Section 3-902 of the Uniform Probate Code and is consistent with the portions of former Sections 750-752 relating to giving effect to the testator's intention.

Subdivision (e) continues a portion of subdivision (a) of former Section 662, with the addition of the exception provided in subdivision (f). Subdivision (f) is drawn from subdivision (c) of Uniform Probate Code Section 3-902 and is consistent with former Section 753. See also Sections 32 ("devise" defined), 8871 ("annuity" defined), 8872 ("demonstrative devise" defined), 8873 ("general devise" defined), 8874 ("residuary devise" defined), 8875 ("specific devise" defined).

DISPOSITION OF EXISTING SECTIONS

DIVISION 3. ADMINISTRATION OF ESTATES OF DECEDENTS

CHAPTER 13. SALES

Article 1. Sales in General§ 750 (repealed). Order of resort to estate property to pay debts, expenses, or family allowance

Comment. Former Section 750 is superseded by Section 8880.

§ 751 (repealed). Order of resort to estate property to pay legacies

Comment. Former Section 751 is superseded by Section 8880.

§ 752 (repealed). Abatement among legacies

Comment. Former Section 752 is superseded by Section 8880.

§ 753 (repealed). Contribution of devisees and legatees after sale

Comment. Former Section 753 is superseded by subdivision (f) of Section 8880.

§ 754 (repealed). Discretion of personal representative to sell

Comment. Former Section 754 is continued in substance in the first sentence of subdivision (a) of Section 8244 and in subdivision (a) of Section 8245.

§ 754.5 (repealed). Sale of real and personal property as a unit

Comment. Former Section 754.5 is continued in substance in Section 8246.

§ 754.6 (repealed). Sale of leasehold interest

Comment. Former Section 754.6 is continued in substance in Sections 8241(d) ("personal property" defined), 8243(b) ("real property" defined), and in the general sales provisions in Sections 8270-8281 (personal property sales) and Sections 8290-8302 (real property sales).

§ 755 (repealed). Court confirmation

Comment. Former Section 755 is continued in substance in Section 8279 (personal property), in Section 8294 (real property), and in Section 7142 (clerk to set petition for hearing).

§ 756 (repealed). Objections to confirmation; proof of notice

Comment. The first sentence of former Section 756 is continued in substance in subdivision (d) of Section 8281 (personal property) and in subdivision (e) of Section 8296 (real property). The second sentence of former Section 756 is continued in substance in subdivision (a) of Section 8281 and in 8283 (personal property), in subdivision (a) of Section 8296 (real property), and in subdivision (c) of Section 8298 (real property).

§ 756.5 (repealed). Overbid

Comment. Former Section 756.5 is continued in substance in Section 8282.

§ 757 (repealed). Sales pursuant to direction in will

Comment. The first sentence of former Section 757 is continued in substance in subdivision (b) of Section 8244, in paragraph (a)(1) of Section 8245, in paragraph (b)(1) of Section 8270, in the first sentence of subdivision (a) of Section 8279, in subdivision (d) of Section 8290, and in the first sentence of subdivision (a) of Section 8294. The second sentence of former Section 757 is continued in substance in the first sentence of subdivision (a) of Section 8244 (real and personal property), in the first sentence of subdivision (a) of Section 8279 (personal property), and in the second sentence of subdivision (a) of Section 8294 (real property). The third sentence of former Section 757 is continued in substance in subdivision (b) of Section 8245.

§ 758 (repealed). Order requiring sale

Comment. Former Section 758 is continued in substance in Section 7142 (clerk to set petition for hearing) and in subdivision (a) of Section 8244.

3147

§ 759 (repealed). Neglect or misconduct of personal representative

Comment. Former Section 759 is continued in substance in Section 8330.

§ 760 (repealed). Contract with agent or broker

Comment. The first sentence of former Section 760 is continued in substance in subdivision (a) and the first sentence of subdivision (b) of Section 8260. The second sentence of former Section 760 is continued in substance in Section 8265. The third sentence of former Section 760 is continued in substance in subdivision (b) of Section 8260. The fourth sentence of former Section 760 is continued in substance in subdivision (c) of Section 8260. The fifth sentence of former Section 760 is continued in substance in Section 8262 and in subdivision (a) of Section 8263.

§ 760.5 (repealed). Contract with auctioneer

Comment. The first sentence of former Section 760.5 is continued in substance in subdivision (a) of Section 8261. The second sentence of former Section 760.5 is continued in the first sentence of subdivision (b) of Section 8261. The third sentence of former Section 760.5 is continued in substance in Section 8262. The fourth sentence of former Section 760.5 is continued in the second sentence of subdivision (b) of Section 8261. The fifth, sixth, and seventh sentences of former Section 760.5 are continued in subdivisions (c), (d), and (e), respectively, of Section 8261.

3146

§ 761 (repealed). Allocation of commissions among competing agents

Comment. Former Section 761 is continued in substance in Section 8264.

§ 761.5 (repealed). Compensation of agent who procures increased bid

Comment. Former Section 761.5 is continued in substance in the second sentence of subdivision (b) of Section 8263.

§ 762 (repealed). Application of sale proceeds of encumbered property

Comment. Former Section 8321 is continued in substance in subdivisions (a) and (c) of Section 8321.

§ 763 (repealed). Payment of sale proceeds to clerk and discharge of encumbrance

Comment. Former Section 763 is continued in substance in subdivisions (b) and (c) of Section 8321.

§ 764 (repealed). Sale to lienholder

Comment. Former Section 764 is continued in substance in Section 8322.

3053

Article 2. Sale of Personal Property

§ 770 (repealed). Sale of depreciating property and property needed to provide family allowance

Comment. Former Section 770 is continued in substance in subdivision (b) of Section 8270 and in Section 8276. See also Section 8242 ("rapidly depreciating property" defined).

§ 771 (repealed). Sale of securities; savings and loan transactions

Comment. Former Section 771 is continued in substance in Sections 8277 and 8278, except that the last portion of the fourth sentence of former Section 771 is continued in subdivision (c) of Section 8270.

§ 771.3 (repealed). Purchase of securities or commodities sold short

Comment. Former Section 771.3 is continued in substance in Section 8135 (powers and duties of personal representatives).

§ 771.5 (repealed). Sale of subscription rights

Comment. Former Section 771.5 is continued in substance in Section 8279.

§ 772 (repealed). Notice of sale; public sales

Comment. The first sentence of former Section 772 is continued in substance in subdivision (a) of Section 8270. The second sentence of former Section 772 is continued in subdivision (e) of Section 8270. The third sentence of former Section 772 is continued in substance in Section 8271. The fourth sentence of former Section 772 is continued in subdivision (c) of Section 8271 and in Section 8273. The fifth sentence of former Section 772 is continued in substance in subdivisions (a) and (b) of Section 8272. The sixth and seventh sentences of former Section 772 are continued in substance in subdivision (c) of Section 8272. The eighth sentence of former Section 772 is continued in substance in Section 8276.

§ 773 (repealed). Terms of sale

Comment. The first, second, third, and fourth sentences of former Section 773 are continued in substance in subdivisions (a), (b), and (c) of Section 8274. The fifth, sixth, seventh, and eighth sentences of former Section 773 are continued in substance in Section 8275.

3025

§ 774 (repealed). Sale of partnership interests

Comment. The first sentence of former Section 774 is continued in substance in Section 8241 ("personal property" defined) and in Sections 8270-8281 (personal property sales). The second sentence of former Section 774 is continued in subdivision (e) of Section 8281.

§ 775 (repealed). Order vacating sale and directing resale

Comment. Former Section 775 is continued in substance in Section 8310.

§ 776 (repealed). Order vacating sale and confirming sale to new high bidder

Comment. Former Section 776 is continued in substance in Section 8311.

2959

Article 3. Sale of Real Property

§ 780 (repealed). Notice of sale

Comment. The first sentence of former Section 780 is continued in substance in subdivision (a) of Section 8290, except that the requirement that the notice state the "time and place of sale" is continued in subdivision (a) of Section 8291. The second sentence of former Section 780 is continued in substance in subdivision (c) of Section 8290. The third sentence of former Section 780 is continued in substance in paragraph (3) of subdivision (a) of Section 8291 (requiring a "legal description" of the property). The fourth sentence of former Section 780 is continued in substance in subdivision (b) of Section 8291.

§ 781 (repealed). Sales at public auction

Comment. Former Section 781 is continued in substance in subdivisions (a) and (b) of Section 8292.

§ 782 (repealed). Private sales

Comment. The first sentence of former Section 782 is continued in substance in subdivision (b) of Section 8290, in paragraph (2) of subdivision (a) of Section 8291, and in subdivision (a) of Section 8293. The second sentence of former Section 782 is continued in substance in subdivision (b) of Section 8293.

§ 783 (repealed). Postponement of public auction sales

Comment. Former Section 783 is continued in substance in subdivision (c) of Section 8292.

§ 784 (repealed). Minimum price for private sales of real property

Comment. Former Section 784 is continued in substance in Section 8295.

§ 785 (repealed). Court confirmation; overbid; order confirming or vacating sale

Comment. The first sentence of former Section 785 is continued in substance in subdivisions (b), (c), and (d) of Section 8296, and in subdivisions (a) and (d) of Section 8298. The second and third sentences of former Section 785 are continued in substance in subdivisions (a) and (b) of Section 8297 and in subdivisions (a) and (b) of Section 8298.

The fourth sentence of former Section 785 is continued in substance in subdivision (b) of Section 8264. The fifth sentence of former Section 785 is continued in substance in the third sentence of subdivision (a) of Section 8297. The sixth sentence of former Section 785 is continued in substance in subdivision (d) of Section 8263 and in the third sentence of subdivision (a) of Section 8297. The seventh sentence of former Section 785 is continued in substance in the introductory clause of subdivision (a) of Section 8297.

2958

§ 785.1 (repealed). Discretion of personal representative in case of credit sales

Comment. Former Section 785.1 is continued in substance in subdivision (c) of Section 8297.

§ 786 (repealed). Conveyance after confirmation

Comment. The first sentence of former Section 786 is continued in subdivision (a) of Section 8301. The second sentence of former Section 786 is continued in substance in subdivision (c) of Section 8301.

§ 787 (repealed). Sales on credit

Comment. Former Section 787 is continued in substance in Section 8302.

§ 788 (repealed). Order vacating sale and directing resale

Comment. Former Section 788 is continued in substance in Section 8310.

§ 789 (repealed). Order vacating sale and confirming sale to new high bidder

Comment. Former Section 789 is continued in substance in Section 8311.

§ 792 (repealed). Fraudulent sale

Comment. Former Section 792 is continued in substance in Section 8331.

§ 793 (repealed). Limitation of actions for recovery of property

Comment. Former Section 793 is continued in substance in Section 8332.

§ 794 (repealed). Land suitable for grazing or pasture

Comment. Subdivision (a) of former Section 794 is not continued. That subdivision was merely a statement of legislative purpose. Subdivision (b) of former Section 794 is continued in substance in Section 8300.

Article 4. Sale of Contract to Purchase

§ 800 (repealed). Method of sale of decedent's contract right to purchase real property

Comment. Former Section 800 is continued in substance in subdivision (a) of Section 8243 ("real property" defined), in subdivision (a) of Section 8299, and in the general provisions for sale of real property in Sections 8290-8302. Special provisions concerning sale of a contract to purchase real property may be found in Sections 8298(a)(7), 8299, and 8301(b).

§ 801 (repealed). Conditions of sale of decedent's contract right to purchase real property; bond

Comment. Former Section 801 is continued in substance in Section 8299.

§ 802 (repealed). Assignment of contract after confirmation

Comment. Former Section 802 is continued in substance in subdivisions (b) and (c) of Section 8301.

3412

Article 5. Sale of Mining Property

§ 810 (repealed). Petition for sale of mining property

Comment. Former Sections 810 to 814 are not continued. The sale of mining property is conducted under the provisions for sale of real property generally. See Sections 8290-8304.

Under former Sections 810-814, two court proceedings were required: one on the petition for a court order authorizing the sale, and another on the petition for court confirmation of sale. This procedure was cumbersome, unnecessary, and wasteful. Moreover, the procedures for sale of mining property were rarely used. Hudner, Sales of Estate Property, in 1 California Decedent Estate Administration § 14.71, at 554 (Cal. Cont. Ed. Bar 1971).

Former Section 810 also permitted the court to authorize the personal representative to give an option to purchase a mining claim. Concerning an option to purchase real or personal property generally given in the decedent's will, see Section 7559 [Memorandum 84-13].

§ 811 (repealed). Hearing and order

Comment. Former Section 811 is not continued. See the Comment to Section 810.

§ 812 (repealed). Bond; execution of agreement

Comment. Former Section 812 is not continued. See the Comment to Section 810.

§ 813 (repealed). Cancellation for default

Comment. Former Section 813 is not continued. See the Comment to Section 810.

§ 814 (repealed). Confirmation of sale

Comment. Former Section 814 is not continued. See the Comment to Section 810.