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First Supplement to Memorandum 85-56

Subject: Comments of State Bar Section Concerning AB 196.

Attached to Memorandum 85-56 is a letter from the Executive Committee of the State Bar Section containing comments concerning Assembly Bill 196.

The staff has reviewed the comments of the State Bar Section and prepared the attached amendments to Assembly Bill 196 for consideration and approval at the May meeting. A copy of Assembly Bill 196 is attached to Memorandum 85-56.

Also attached to this supplement is a copy of Assembly Bill 97 and staff suggested amendments to this bill. The amendments would conform Assembly Bill 97 to the amendments made in Assembly Bill 196. At the request of the State Bar Section, the staff asked Assembly Member McAlister to refer Assembly Bill 97 to a conference committee so that these amendments could be made to the bill.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 196  
(As amended in Assembly April 24, 1985)

Amendment 1

In line 3 of the title, after "6147," insert:  
6152,

Amendment 2

On page 20, between lines 37 and 38, insert:

(e) Any person who objects, as provided in this section, to the proposed action shall receive notice of hearing on any petition for court authorization or confirmation of the proposed action.

Amendment 3

On page 20, strike out line 40, and on page 21, strike out lines 1 to 3, inclusive, and insert:

591.8. Under Sections 591.3 and 591.4 the advice of proposed action shall be in substantially the following form or in such form as may be prescribed by the Judicial Council:

Amendment 4

On page 21, strike out line 18 and insert:

(Name(s))

Amendment 5

On page 21, strike out lines 19 to 22, inclusive

Amendment 6

On page 21, line 34, after the second "paid" insert:  
to an agent

Amendment 7

On page 21, line 35, after "transaction" insert:  
, and state any probate inventory valuation of the property on file  
with the court

Amendment 8

On page 22, line 6, strike out "the" and insert:  
any

Amendment 9

On page 22, line 7, strike out "stated above." and insert:  
following address \_\_\_\_\_  
\_\_\_\_\_.

Amendment 10

On page 22, line 10, strike out "name. You" and insert:  
name(s). Alternatively, you

Amendment 11

On page 22, line 14, strike out "objection" and insert:  
written objection or the court order

Amendment 12

On page 22, strike out lines 19 to 26, inclusive, and insert:  
If you do not object in writing or obtain a court order  
preventing the proposed action, you will be treated as if you  
consented to the proposed action and you may not object after the  
proposed action is taken.

Amendment 13

On page 22, line 29, after "inclusive," insert:  
and the applicable fiduciary duties,

Amendment 14

On page 22, strike out lines 36 and 37 and in line 38, strike out "if any, used for the sale." and insert:  
determine. The requirements applicable to court confirmation of sales of real property, including publication of notice of sale, court approval of agent's and broker's commissions, and sale at not less than 90 percent of appraised value, do not apply to sales under independent administration.

Amendment 15

On page 23, strike out lines 1 to 4, inclusive.

Amendment 16

On page 23, line 5, strike out "(c)" and insert:  
(b)

Amendment 17

On page 23, line 9, after "than the" insert:  
estimated

Amendment 18

On page 23, line 11, after "the" insert:  
estimated

Amendment 19

On page 25, strike out line 25 and in line 26 strike out "For" and insert:  
executed. For

Amendment 20

On page 25, strike out lines 26 to 32, inclusive

Amendment 21

On page 25, line 35, after the period, insert:

A requirement that the initial devisee survive for a specified period of time after the death of the testator constitutes a contrary intent. A requirement that the initial devisee survive until a future time that is related to the probate of the will or administration of the estate of the testator constitutes a contrary intent.

Amendment 22

On page 25, between lines 35 and 36, insert:

SEC. 17. Section 6152 of the Probate Code is amended to read:

6152. Unless otherwise provided in the will:

(a) Except as provided in subdivision (b), halfbloods, adopted persons, persons born out of wedlock, stepchildren, foster children, and the issue of all such persons when appropriate to the class, are included in terms of class gift or relationship in accordance with the rules for determining relationship and inheritance rights for purposes of intestate succession.

(b) In construing a devise by a testator who is not the natural parent, a person born to the natural parent shall not be considered the child of that parent unless the person lived while a minor as a regular member of the household of the natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse. In construing a devise by a testator who is not the adoptive parent, a person adopted by the adoptive parent shall not be considered the child of that parent unless the person lived while a minor (either before or after the adoption) as a regular member of the household of the adopting parent or of that parent's parent, brother, sister, or surviving spouse.

(c) Subdivision (a) and (b) also apply in determining:

(1) Persons who would be kindred of the testator or kindred of a surviving, deceased, or former spouse of the testator under Section 6147.

(2) Persons to be included as issue of a deceased devisee under Section 6147.

(3) Persons who would be the testator's or other designated person's heirs under Section 6151.

AMENDMENTS TO ASSEMBLY BILL NO. 97  
(As amended in Senate March 18, 1985)

Amendment 1

In line 2 of the title, strike out "Section" and insert:  
Sections 591.9 and

Amendment 2

On page 2, strike out line 1 and insert:

SECTION 1. Section 591.9 is added to the Probate Code, to read:

591.9. (a) Subject to Sections 591.3 to 591.5, inclusive, and the applicable fiduciary duties, an executor or administrator who has been granted authority to administer the estate without court supervision under this article may sell property of the estate either at public auction or private sale, and with or without notice, for such price and upon such terms and conditions as the executor or administrator may determine. The requirements applicable to court confirmation of sales of real property, including publication of notice of sale, court approval of agent's and broker's commissions, and sale at not less than 90 percent of appraised value, do not apply to sales under independent administration. This subdivision applies to any sale made under authority of this article on or after January 1, 1985.

(b) If the executor or administrator is otherwise required to file a bond and the court determines that real property of the estate will be sold without court supervision under this article, the court, in its discretion, may fix the amount of the bond at not less than the estimated value of the personal property, the estimated proceeds of the real property that will be sold under this article, and the estimated value of the probable annual gross income of all of the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

SEC. 2. Section 649.1 of the Probate Code is

Amendment 3

On page 4, line 1, strike out "SEC. 2." and insert:  
SEC. 3.

Amendment 4

On page 4, line 24, strike out "SEC. 3." and insert:  
SEC. 4.

Amendment 5

On page 4, line 38, strike out "For the purposes of" and  
strike out lines 39 and 40

Amendment 6

On page 5, strike out lines 1 to 4, inclusive

Amendment 7

On page 5, line 7, after the period, insert:  
A requirement that the initial devisee survive for a specified period  
of time after the death of the testator constitutes a contrary  
intent. A requirement that the initial devisee survive until a future  
time that is related to the probate of the will or administration of  
the estate of the testator constitutes a contrary intent.

Amendment 8

On page 5, line 8, strike out "SEC. 4." and insert:  
SEC. 5.

Amendment 9

On page 5, line 17, strike out "SEC. 5." and insert:  
SEC. 6.