

#L-1028

9/24/85

Third Supplement to Memorandum 85-71

Subject: Study L-1028 - Estates and Trusts Code (Independent Administration)

Attached for your possible reference prior to and at the October meeting are the independent administration provisions that were affected by Assembly Bill 196. We plan to distribute these provisions with the tentative recommendation when we sent it to interested persons for review and comment.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

PROVISIONS OF EXISTING INDEPENDENT ADMINISTRATION
OF ESTATES ACT AFFECTED BY ASSEMBLY BILL 196

Probate Code § 591.1 (repealed and added). Petition for independent administration

591.1. (a) To obtain authority to administer the estate under this article, the executor or administrator shall petition the court for that authority either in the petition for his or her appointment or in a separate petition. The executor or administrator may not be authorized to administer the estate under this article if the decedent's will provides that the estate shall not be administered under this article. The provisions of this article do not apply to a special administrator.

(b) A petition under this section may request either of the following:

(1) Authority to administer the estate under this article.

(2) Authority to administer the estate under this article without authority to do either of the following

under the authority of this article:

(A) Sell or exchange real property.

(B) Grant an option to purchase real property.

(c) If the authority is requested in a petition for appointment, notice of the hearing of the petition shall be given for the period and in the manner applicable to the petition for appointment.

(d) If the authority is requested in a separate petition, the clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by Section 1200. At least 10 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to all legatees and devisees and to all known heirs of the decedent and to all persons who have requested notice as provided in Section 1202.

(e) The notice of the hearing of the petition for authority to administer the estate under this article, whether included in the petition for appointment, or in a separate petition, shall specify that authority to administer the estate under the Independent Administration of Estates Act is being requested.

(f) Any person interested in the estate may appear and object to the granting of authority to administer the estate under this article by filing a written statement setting forth the person's objections.

(g) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority, and the letters, testamentary or of administration shall be endorsed to the effect that the letters are issued pursuant to this article and, if the authority granted does not include the authority to sell or exchange real property or grant options to purchase real property under this article, that limitation shall be included in the endorsement.

Probate Code § 591.2 (amended). Matters for which court supervision required

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

- (1) Allowance of executor's and administrator's commissions and attorney's fees.
- (2) Settlement of accountings.
- (3) Preliminary and final distributions and discharge.
- (4) Sale or exchange of real property and grant of options to purchase real property if the authority of the executor or administrator granted under this article specifically excludes the authority to take those actions under the authority of this article.

(b) Notwithstanding subdivision (a), the executor or administrator may obtain court supervision as provided in this code of any action taken by him or her during the administration of the estate. All publications of notice required by this code shall continue to be given except when no hearing is required because the executor or administrator does not seek court supervision of an action or proposed action.

Probate Code § 591.3 (amended). When advice of proposed action is required; waiver

591.3. (a) Except as provided in subdivisions (c) and (d):

(1) Prior to the consummation of any of the actions described in subdivision (b) without court supervision, the executor or administrator to whom authority has been granted to act without court supervision shall advise the persons affected by the proposed action of his or her intention to take such action.

(2) The advice, known and referred to in this article as "advice of proposed action," shall be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to persons who have filed a request for special notice pursuant to Section 1202.

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

(1) Selling or exchanging real property.

(2) Granting options to purchase real property.

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

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

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

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

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

(8) Investing funds of the estate, except depositing funds in banks and investing in insured savings and loan association accounts, in units of a common trust fund described in Section 585.1, in direct obligations of the United States maturing not later than one year from the

date of investment or reinvestment, and in mutual funds which are comprised of (A) those obligations, or (B) repurchase agreements with respect to any obligation, regardless of maturity, in which the fund is authorized to invest.

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

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

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

(c) The advice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The advice of proposed action need not be given to any person who, in writing, waives his or her right to the advice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the advice, such as the service, mailing, or time requirements of Section 591.4, or the giving of the advice in its entirety for the particular proposed action.

Probate Code § 591.4 (amended). Advice of proposed action

591.4. (a) The advice of proposed action shall be delivered personally or sent by first-class mail, or sent by airmail to any person residing outside the jurisdiction of the United States, to each person described in Section 591.3 at his or her last known address. A copy of the form prepared by the Judicial Council for objecting to a proposed action shall accompany the advice of proposed action. The advice of proposed action shall be in substantially the form set out in Section 591.8 and shall state the name and mailing address of the executor or administrator, the person and telephone number to call to get additional information, and the action proposed to be taken, with a reasonably specific description of such action, and the date on or after which the proposed action is to be taken. Such date shall not be less than 15 days after the personal delivery, or not less than 20 days after the mailing, of the advice. When the proposed action

involves the sale or exchange of real property, or the granting of an option to purchase real property, the advice of proposed action shall state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

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

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

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

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

(2) The person may deliver or mail a written objection to the executor or administrator at the address stated in

the advice of proposed action, so that the objection is received before the date specified on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is later.

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

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

(d) All persons described in Section 591.3 who have been given an advice of proposed action as provided in Section 591.4 may object only in the manner provided in this section. The failure to object is a waiver of any right to have the court later review the action taken unless the person who fails to object establishes that he or she did not actually receive advice of the proposed action before the time to object expired. The court may, however, review actions of the executor or administrator on its own motion or on motion of an interested person who did not receive the advice of proposed action before the time to object expired and who did not consent to the proposed action or waive his or her right to receive the advice of proposed action pursuant to subdivision (c) or (d) of Section 591.3.

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

Probate Code § 591.8 (added). Form for advice of proposed action

591.8. (a) For purposes of Sections 591.3 and 591.4, the advice of proposed action shall be in substantially the following form or in another form as may be prescribed by the Judicial Council:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of _____ No. _____

(deceased)

ADVICE OF PROPOSED ACTION
(Probate Code Sections 591.3, 591.4)

1. The executor or administrator of the estate of the deceased is:

(Name(s))

2. The executor or administrator has authority to administer the estate without court supervision under the Independent Administration of Estates Act (California Probate Code Sections 591-591.9).

3. On or after _____, 19____, the executor or administrator will take the following action:

[Describe proposed action in reasonably specific terms. If the proposed action involves a sale or exchange of real property or an option to purchase real property, (1) state the material terms of the transaction, including any sale price and the amount of or method of calculating any compensation paid or to be paid to an agent or broker in connection with the transaction, (2) state the amount of any probate inventory valuation of the property on file with the court, and (3) set forth the following statement: "A sale of real property without court supervision means that the sale will not be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder."]

4. If you need more information, you may call:

(Name)

(Telephone number)

5. If you object to the proposed action, you may deliver or mail a written objection to any executor or administrator at the following address:

_____. Your objection can be simply stated. All you need to do is state that you object to the proposed action (specifying the action you object to) and sign your name(s). Alternatively, you may also apply to the court for an order preventing the executor or administrator from taking the proposed action without court supervision.

6. Your written objection or the court order must be received before the date specified above, or before the proposed action is taken, whichever is later. If you object, the executor or administrator may take the proposed action only under court supervision.

7. 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.

Dated: _____
(Signature of executor or administrator or attorney for executor or administrator)

(b) The Judicial Council shall prepare a form that a person may use to object to a proposed action pursuant to paragraph (2) of subdivision (a) of Section 591.5. A person who wishes to object to a proposed action either may use the Judicial Council form or may make the objection in any other writing that satisfies the requirements of this article.

Probate Code § 591.9 (added). Sales of property

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 agents' and brokers' 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, 1955.

(b) If the executor or administrator is otherwise required to file a bond and is authorized to sell real property of the estate 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 net proceeds of the real property authorized to 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.