

**Note.** Changes may be made in this Agenda. For meeting information, please call John DeMouilly (415) 494-1335

jd10  
10/06/86

Time  
October 16 (Thursday) 3:00 p.m. - 8:00 p.m.  
October 17 (Friday) 9:00 a.m. - 4:00 p.m.

Place  
The Newporter  
1107 Jamboree Road  
Newport Beach, CA 92660  
(714) 644-1700

**FINAL AGENDA**

for meeting of

**CALIFORNIA LAW REVISION COMMISSION**

Newport Beach

October 16-17, 1986

1. **Minutes of September 4-5, 1986, Meeting (sent 9/24/86)**
  
2. **Administrative Matters**  
Travel Claims of Commissioners  
Oral Report  
  
Term of Office of Officers  
Memorandum 86-96 (sent 9/15/86)  
  
1986 Legislative Program  
Memorandum 86-80 (sent 9/16/86)  
  
1987 Legislative Program  
Memorandum 86-81 (sent 9/25/86)  
First Supplement to Memorandum 86-81 (sent 10/1/86)
  
3. **Study F-603 - Retroactive Application of Property Division Legislation**  
Memorandum 86-86 (sent 10/3/86)

4. **Study L-642 - Trusts (Application of Trust Law to Excluded Trusts)**  
  
Memorandum 86-87 (to be sent)  
Draft of Tentative Recommendation (attached to Memorandum)
  
5. **Study L-1037 - Estate and Trust Code (Estate Management)**  
  
Memorandum 86-89 (sent 9/30/86)  
Draft of Tentative Recommendation (attached to Memorandum)  
First Supplement to Memorandum 86-89 (sent 9/15/86)  
Second Supplement to Memorandum 86-89 (sent 10/3/86)  
Third Supplement to Memorandum 86-89 (to be sent)  
Fourth Supplement to Memorandum 86-89 (enclosed)
  
6. **Study L-1028 - Estate and Trust Code (Independent Administration of Estates)**  
  
Memorandum 86-85 (sent 9/24/86)  
Tentative Recommendation (attached to Memorandum)  
First Supplement to Memorandum 86-85 (sent 10/1/86)  
Second Supplement to Memorandum 86-85 (to be sent)
  
7. **Study L-1029 - Estate and Trust Code (Marital Deduction Gifts)**  
  
Memorandum 86-88 (sent 9/30/86)  
Draft of Tentative Recommendation (attached to Memorandum)
  
8. **Study L-700 - Estate and Trust Code (Guardianship and Conservatorship)**  
  
Memorandum 86-93 (to be sent)  
Draft of Recommendation (attached to Memorandum)
  
9. **Study L-655 - Estate and Trust Code (Inventory and Appraisal)**  
  
Memorandum 86-84 (sent 10/1/86)  
Draft of Tentative Recommendation (attached to Memorandum)  
First Supplement to Memorandum 86-84 (enclosed)
  
10. **Study L-1047 - Estate and Trust Code (Appeals)**  
  
Memorandum 86-90 (sent 9/25/86)  
Draft of Tentative Recommendation (attached to Memorandum)

11. Study L-1041 - Estate and Trust Code (Rules of Procedure)

Memorandum 86-91 (sent 9/24/86)

First Supplement to Memorandum 86-91 (to be sent)

FUTURE MEETING SCHEDULE

November 1986

13 (Thursday)	3:00 p.m. - 8:00 p.m.	State Capitol
14 (Friday)	9:00 a.m. - 3:30 p.m.	Sacramento

December 1986

4 (Thursday)	3:00 p.m. - 8:00 p.m.	Holiday Inn
5 (Friday)	9:00 a.m. - 4:00 p.m.	150 E. Angeleno Burbank 91510 (818) 841-4770

January 1987

15 (Thursday)	3:00 p.m. - 8:00 p.m.	State Bar Bldg.
16 (Friday)	9:00 a.m. - 4:00 p.m.	San Francisco

February 1987

19 (Thursday)	3:00 p.m. - 8:00 p.m.	San Diego
20 (Friday)	9:00 a.m. - 4:00 p.m.	

March 1987

12 (Thursday)	3:00 p.m. - 8:00 p.m.	Sacramento
13 (Friday)	9:00 a.m. - 3:30 p.m.	

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
October 16-17, 1986  
NEWPORT BEACH

A meeting of the California Law Revision Commission was held in Newport Beach on October 16-17, 1986.

Law Revision Commission

Present: Arthur K. Marshall, Chairperson (Oct. 16)  
Ann E. Stodden, Vice Chairperson Edwin K. Marzec  
Roger Arnebergh Tim Paone

Absent: Bill Lockyer, Member of Senate  
Alister McAlister, Member of Assembly  
Bion M. Gregory

Staff Members

Present: John H. DeMouilly Robert J. Murphy III  
Nathaniel Sterling Stan G. Ulrich

Consultant Present

Prof. Russell Niles, Property and Probate Law

Other Persons Present

Alex Greel, California Association of Realtors, Sacramento  
(Oct. 16)  
Nancy E. Ferguson, California Probate Referees' Association,  
Chico  
Ralph Palmieri, Beverly Hills Bar Association, Probate  
Trust and Estate Planning Section, Beverly Hills (Oct. 17)  
James Quillinan, Executive Committee, State Bar Estate  
Planning, Trust and Probate Law Section, Mountain View  
William V. Schmidt, Executive Committee, State Bar Estate  
Planning, Trust and Probate Law Section, Costa Mesa  
Richard Stack, Los Angeles County Bar Association, Probate  
and Trust Law Section, Los Angeles  
Linda Wisotsky, Executive Committee, State Bar Family Law  
Section, Beverly Hills (Oct. 16)  
Shirley Yawitz, California Probate Referees' Association, San  
Francisco

ADMINISTRATIVE MATTERS

MINUTES OF SEPTEMBER 4-5, 1986, MEETING

The Commission approved the Minutes of the September 4-5, 1986, Meeting, with the following corrections:

(1) On page 5, in the fourth line of the discussion at the top of the page, "submit to the" was substituted for "submit the the."

(2) On page 5, in the fourth line of the discussion of Study L-655, a parenthesis was inserted after "Exhibit 1."

(3) On page 7, in the first line of the discussion of Study L-1035 at the top of the page, "Memorandum 86-57" was substituted for "Memorandum 86-75."

TERM OF OFFICE OF OFFICERS

The Commission considered Memorandum 86-96 concerning the terms of office of the Chairperson and Vice Chairperson. The Commission determined that the one-year terms of office of the Chairperson and Vice Chairperson will commence on September 1 and end on August 31 of the following year. Accordingly, the terms of office of the present Chairperson and Vice Chairperson commenced on September 1, 1986, and will end on August 31, 1987. The new officers who will succeed the existing officers will be elected so that they can take office on September 1, 1987, for a one-year term that will end on August 31, 1988.

FUTURE MEETINGS

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March 1987

12 (Thursday) 3:00 p.m. - 8:00 p.m. Sacramento  
13 (Friday) 9:00 a.m. - 3:30 p.m.

1986 LEGISLATIVE PROGRAM

The Commission considered Memorandum 86-80. The Executive Secretary made the following report on the 1986 Legislative Program.

Enacted

Statutes of 1986, Ch. 49 - Assembly Bill 625 - Buol Case Urgency Bill (provides that 1983 statute applies only to proceedings commenced after January 1, 1984)

Statutes of 1986, Ch. 783 - Assembly Bill 2625 - Comprehensive Probate Bill (Disposition of Estate Without Administration; Small Estate Set-Aside; Proration of Estate Taxes; Technical and Clarifying Revisions)

Statutes of 1986, Ch. 820 - Assembly Bill 2652 - Comprehensive Trust Statute

Statutes of 1986, Res. Ch. 65 - Assembly Concurrent Resolution 93 - Continues Commission Authority to Study Topics Previously Authorized for Study

Dead

Assembly Bill 2626 - Reservation of Legislative Power for Disposition of Property in Marriage Dissolution Cases

Referred to Inactive File

Assembly Bill 195 - Law Revision Commission Statute

Discussion of Senate Bill No. 2340

The Commission discussed Senate Bill No. 2340. This bill was vetoed by the Governor. The bill would have created a new advisory committee within the California Law Revision Commission to evaluate criminal sentencing provisions of the Penal Code.

A motion was adopted that the staff should immediately inform the Commission or members thereof when the staff becomes aware of pending legislation directly affecting the Commission.

1987 LEGISLATIVE PROGRAM

The Commission considered Memorandum 86-81.

Retroactive application of property division legislation. The Commission determined that it would not recommend legislation for enactment in 1987 relating to retroactive application in marriage dissolution cases of property division legislation. See the discussion in these Minutes under Study F-603.

Urgency bill on trusts. The Commission determined that it would include urgency legislation on trusts in the legislation recommended for enactment in 1987. The urgency legislation would make clear that the exclusion of certain trusts from the definition of "trust" does not preclude the court or the parties by contract from applying the new trust law provisions to excluded trusts. See the discussion in these Minutes under Study L-642.

The Commission determined that it would not submit recommendations for technical, clarifying, or substantive revisions of the new Trust Law unless the need was urgent. The Commission decided to delay any consideration of nonurgent cleanup revisions suggested by the Bench and Bar until work on higher priority projects has been completed.

Priorities for probate legislation in 1987. The Commission determined that the following matters should be given priority (in the order listed) for recommendations for enactment by the 1987 session of the Legislature:

- (1) Estate Management.
- (2) Independent Administration.
- (3) General Provisions Relating to Notice.

Notice Under Guardianship-Conservatorship Law.

(4) Preliminary Provisions and Definitions.

(5) Creditor Claims.

(6) Opening Estate Administration.

Other matters may be included in the bill introduced for enactment in 1987 if they could be included without the need to devote a significant amount of Commission or staff time.

The Commission decided that it would publish the Estate Management and the Independent Administration recommendations in a printed pamphlet. This pamphlet would be distributed to those who have indicated that they wanted to receive and comment on tentative recommendations relating to probate law and procedure. The Commission decided not to distribute a xeroxed tentative recommendation relating to estate management to interested persons and organizations for review and comment. The cost of reproducing and mailing such a xeroxed tentative recommendation would be substantial. More important, the time required to reproduce, mail, and receive comments on the tentative recommendation would preclude introduction of the proposed legislation in 1987.

Public Guardian and Public Administrator. Legislation on this subject will be recommended for enactment in 1987 only if a recommendation can be approved without expenditure of a significant amount of Commission or staff time. If a recommendation on this subject is submitted in 1987, a separate bill would be introduced to effectuate the recommendation.

#### TRAVEL CLAIMS OF COMMISSIONERS

The Assistant Executive Secretary gave an oral report concerning the procedure for submission of travel claims of Commissioners. The travel claim regulations are complex, and for this reason the Commission's Administrative Assistant is charged with responsibility to supervise the process.

The Administrative Assistant has prepared a worksheet (blue) for use by Commissioners that indicates the information and receipts that are required. Commissioners should fill out the worksheet completely and attach all required receipts, or there will be delays in processing the travel claim caused by the need to gather all relevant material.

From the worksheet information the Administrative Assistant prepares the formal travel claim (white) for the Commissioner's signature. The claim is then returned to the Commission office for final approval and submission to the State for payment.

Questions about travel claims or the procedure should be directed to the Administrative Assistant.

STUDY F-603 - RETROACTIVE APPLICATION OF PROPERTY DIVISION LEGISLATION

The Commission considered Memorandum 86-86 and heard an oral report by Linda Wisotsky on behalf of the State Bar Family Law Section Executive Committee relating to retroactive application of property division legislation. The Executive Committee has changed its position concerning the proper way to deal with the Buol and Fabian cases, and now believes that any constitutional uncertainty should be avoided by adopting the rule that Civil Code Sections 4800.1 and 4800.2 do not apply to property acquired before January 1, 1984. If this approach is taken, the courts will have to decide what law applies to previously acquired property. The Executive Committee plans to develop, introduce, and obtain enactment of legislation that it deems appropriate, without Commission involvement. The Commission is agreeable to the Executive Committee assuming this responsibility and will communicate this to the Committee.

STUDY L-1028 - INDEPENDENT ADMINISTRATION

A subcommittee of the Commission considered Memorandum 86-85 (and the attached Tentative Recommendation Relating to Independent Administration) and the First and Second Supplements to Memorandum 86-85. A letter from Team 4 of the State Bar Section was delivered at the meeting and is attached as Exhibit 2 to these Minutes. The following are the decisions of the subcommittee.

§ 10400. Citation of this part (page 8)

No change was made in this section.

§ 10401. "Court supervision" defined (page 8)

This section was revised to read:

10401. As used in this part, "court supervision" includes means the judicial authorization, approval, confirmation, and or instructions that otherwise would be required if authority to administer the estate had not been granted under this part.

Additional Definitions

The following additional definitions were approved for addition to the proposed legislation:

"Full authority" defined

As used in this part, "full authority" means authority to administer the estate under this part with authority to do all of the following under the authority of this part:

- (a) Sell real property.
- (b) Exchange real property.
- (c) Grant an option to purchase real property.
- (d) Borrow money with the loan secured by an encumbrance upon real property of the estate.

"Limited authority" defined

As used in this part, "limited authority" means authority to administer the estate under this part without authority to do any of the following under the authority of this part:

- (a) Sell real property.
- (b) Exchange real property.
- (c) Grant an option to purchase real property.
- (d) Borrow money with the loan secured by an encumbrance upon real property of the estate.

Subdivision (d) is added to each of the new definitions to reflect the decision of the subcommittee that limited authority does not include the power to borrow money upon security of real property.

Except for the addition of the limitation on borrowing money, the new definitions merely recognize the use of the terms "full authority" and "limited authority" under existing practice and would make it easier to understand the statute. The staff should include these definitions in the next draft and use the defined terms where appropriate.

§ 10402. This part not applicable if will so provides (page 8)

No change was made in this section.

§ 10403. Special administrator (page 9)

No change was made in this section.

§ 10404. Application of part (pages 9-10)

Paragraph (3) of subdivision (a) of Section 10404 was revised to read:

10404. (a) This part applies to all of the following cases:  
[portion omitted]

(3) Where authority was granted prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act and one of the following requirements is satisfied:

(A) A petition was filed under former Section 591.1 of the Probate Code after January 1, 1985, requesting that the personal representative be ~~granted the full authority that could be granted authorized to administer the estate~~ under the Independent Administration of Estates Act in effect at the time the petition was filed, and the petition was granted.

(B) A petition is filed under this part requesting that the personal representative be ~~granted the full authority that can be granted authorized to administer the estate~~ under this part, and the petition is granted.

§ 10450. Petition for order granting independent administration authority

Subdivision (b) of Section 10450 be revised to read:

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

(1) ~~Authority Full authority~~ to administer the estate under this part.

(2) Authority to administer the estate under this part without authority to *sell, exchange, or grant an option to purchase real property, or to borrow money with the loan secured by an encumbrance upon real property, ~~authority to do either of the following~~* under the authority of this part~~†~~. *The authority requested pursuant to this paragraph is known as limited authority.*

~~(A) Sell or exchange real property.~~

~~(2) Grant an option to purchase real property.~~

§ 10451. Notice of hearing (page 12)

In subdivision (b) of Section 10451, the reference to [Section 1200] was changed to Section [1200.5]. This is a technical revision.

The second sentence of paragraph (c) was revised to read:

This authority would permit the personal representative with certain exceptions to act without court supervision that would otherwise would be required.

§ 10452. Hearing; order; endorsement on letters (page 13)

Subdivision (c) of Section 10452 should be conformed to the decision that a personal representative with limited authority does not have authority to borrow money with the loan secured by an encumbrance upon real property.

§10453. Increase in amount of bond (pages 13-14)

No change was made in this section.

§ 10454. Revocation of independent administration authority (page 14)

The following was substituted for subdivision (b) of Section 10454:

(b) Notice of the hearing on the petition shall be given for the period and in the manner provided in Section 1200.5. The personal representative shall be served with a copy of the petition and a notice of the time and place of the hearing at least 10 days prior to the hearing. Service on the personal representative shall be made in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure or in such other manner as may be authorized by the court.

§§ 10500-10502. Administration Under Independent Administration Authority (pages 15-19)

The Commission considered the Second Supplement to Memorandum 86-85. The provisions set out as Exhibit 1 to these Minutes were substituted for Sections 10500, 10501, 10502, and 10551 of the Tentative Recommendation. The provisions set out in Exhibit 1 reflect the changes made or suggested by the subcommittee of the Commission that was present when those sections were considered. In some cases, the subcommittee reserved policy issues for determination by the Commission at the November meeting when a quorum will be present.

At the October meeting, the subcommittee determined that limited authority should not include the power to borrow money using real property as security for the loan. A policy question deferred for the November meeting is whether this new limitation should be applied where

the personal representative obtains independent administration authority before the new provision goes into effect. The Commission will review this new restriction on the scope of limited authority at the next meeting and the staff was requested to draft a transitional provision for consideration by the Commission at that time.

The substance of the following statement is to be added to the Comment to Section 10500 (concerning subdivision (b) of that section) (as set out in the Second Supplement to Memorandum 86-85): "If the personal representative obtains court supervision of a real property sale, the notice of sale must be published as would be required if independent administration authority had not been granted unless publication of the notice is not otherwise required (as where the will authorizes the sale of the property)."

§ 10550. Giving advice of proposed action (pages 20-21)

This section was renumbered as Section 10580 and revised to read in substance as follows:

10580. (a) Prior to the consummation of any of the actions described in Article 1 (commencing with Section 10550) without court supervision, a personal representative who has been granted authority to administer the estate under this part shall give advice of proposed action as provided in this article. Nothing in this subdivision authorizes a personal representative to take any action under this part if the personal representative does not have the power to take the action under this part.

(b) A personal representative who has been granted authority to administer the estate under this part may give advice of any proposed action even if the proposed action is one that is not described in Article 1 (commencing with Section 10550). Nothing in this subdivision requires that the personal representative give advice of proposed action where not required under subdivision (a) or authorizes a personal representative to take any action the personal representative is not otherwise authorized to take.

The following sentence was added at the end of the first paragraph of the Comment to Section 10580: "The personal representative need not take an action under independent administration authority even though authorized to do so; if the personal representative so desires, the action may be taken using the applicable court supervised administration procedure. See Section 10500(b)."

10551. Actions requiring advice of proposed action (pages 21-23)

This section is replaced by Article 1 (commencing with Section 10550) of Chapter 4 which is set out in Exhibit 1 to these Minutes.

§ 10552. Persons to whom advice of proposed action must be given  
(pages 23-24)

Section 10552 was renumbered as Section 10581.

The subcommittee deleted the provision of Section 10552 of the Tentative Recommendation that required that advice of proposed action be given to each person interested in a trust if the personal representative is the trustee of a trust that is a devisee under the will of the decedent.

The subcommittee concluded that the problem of giving notice to trust beneficiaries where the personal representative is the trustee is a general problem. This general problem should be dealt with by a general notice provision, not by a special provision relating to one notice only. Accordingly, subdivision (d) of Section 10552 was deleted and the staff was requested to draft a general provision that would in effect treat the trust beneficiaries as devisees where the trustee is the personal representative. Such a provision should be included in the provisions relating to notice generally. When the general provision is drafted, the Commission can consider such matters as unborn and contingent trust beneficiaries, beneficiaries who are minors or lack capacity, and the like. Also, the Commission can consider whether notice to trust beneficiaries should be required where the trustee is a trustee nominated in the trust instrument.

§ 10553. Consent to proposed action (page 24)

This section was renumbered as Section 10582.

§ 10554. Waiver of advice of proposed action (pages 24-25)

This section was renumbered as Section 10583.

A provision should be added to the statute to provide that a waiver can be revoked only by a writing. The provision should be drafted for consideration by the Commission at the next meeting. It was suggested that the provision should permit the revocation to be filed with the court as well as being delivered to the personal

representative, but the revocation would be effective when delivered to the personal representative and should be effective whether or not it is filed with the court. The statutory waiver form should have a portion that can be completed and delivered to the personal representative to effectuate a revocation of the waiver.

The Comment to this section should note that the personal representative has fiduciary duties and that the waiver or failure to object does not relieve the personal representative from liability for failure to comply with those fiduciary duties. For example, even where there is a general waiver, the personal representative could not purchase estate property directly or indirectly.

§ 10555. Form and contents of advice of proposed action (page 25)

This section was renumbered as Section 10584.

The subcommittee decided that the statute should require that the most current form prescribed by the Judicial Council for advice of proposed action be used.

§ 10556. Delivery or mailing of advice of proposed action and copy of form for objecting to proposed action

This section was renumbered as Section 10585.

§ 10557. Objection to proposed action (page 27)

This section was renumbered as Section 10586.

§ 10558. Restraining order (page 27-28)

This section was renumbered as Section 10587.

In the first sentence of the section, after the word "proceeding" in line 6, the following language was added: "at any time before the proposed action is taken."

§ 10559. Court supervision and notice of hearing required if objection made (pages 28-30)

This section was renumbered as Section 10588.

The subcommittee reaffirmed the decision made on several previous occasions that a personal representative who has received a written

objection may not go ahead with the proposed action without first obtaining court approval of the proposed action.

The word "advice" was substituted for "notice" in the Comment, fourth paragraph, second line, second word.

The subcommittee considered a suggestion made by Montgomery and Kreider that subdivision (a) of Section 10559 be revised to read in substance:

10559. (a) If the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under this part and the personal representative has notice of a written objection made under Section 10557 or a restraining order issued under Section 10558, the personal representative shall, if the personal representative desires to take the proposed action, *do one of the following*

(1) *submit* Submit the proposed action to the court for approval following the provisions of this code dealing with court supervision of that kind of action and may take the proposed action only under such order as may be entered by the court.

(2) *Request instructions from the court concerning the proposed action and may take the proposed action only under such order as may be entered by the court, which order may dispense with the need to follow the provisions of this code dealing with court supervision of that kind of action.*

This suggestion was not adopted. Representatives of the Estate Planning, Trust and Probate Law Section were opposed to providing another alternative procedure. To add another alternative procedure would make the law more complex and the alternative procedure probably would not be used as an alternative to supervised administration anyway.

**§ 10560. Effect of failure to object to proposed action (pages 30-32)**

This section was renumbered as Section 10589.

There was considerable concern expressed about this section by the persons who commented on the tentative recommendation. There was general agreement among the persons who commented that the personal representative should be protected from an unhappy beneficiary who received an advice of proposed action and failed to object. Concern was expressed that the section as drafted might defeat this objective.

The subcommittee reviewed the comments received on this section and decided that any decision concerning the section should be deferred until the next meeting when a quorum will be present.

The subcommittee determined that the question of what statute of limitations should apply to obtaining court review of actions taken in estate administration is a general matter that should be dealt with in a general provision. No special provision dealing with this matter should be included in the independent administration statute.

§ 10561. Protection of persons dealing in good faith with personal representative (page 32)

This section was renumbered as Section 10590.

§ 10600. Judicial Council form for advice of proposed action (page 33)

This section was revised in substance to read:

10600. The form used to give advice of proposed action shall be the most current form prescribed by the Judicial Council for Advice of Proposed Action.

It was suggested that the form for advice of proposed action should advise the recipient of the advice of proposed action that an objection to the proposed action may result in delay in administration, additional expense to the estate, and possible loss. Similar language was contained in the LA policy memorandum. The staff should advise the Judicial Council of this suggested addition which could be made at the time the form is revised in light of the proposed legislation to be submitted for enactment in 1987.

§ 10601. Form for advice of proposed action (pages 33-35)

This section was deleted.

§ 10602. Judicial Council form for objecting to proposed action (page 35)

Section 10602 was revised to delete subdivision (a).

§ 10603. Statutory form for waiver of advice of proposed action (pages 35-37)

The statutory waiver of advice form should include as a part of the form a portion that can be executed by the person making the waiver if the person desires to revoke ("cancel") the waiver.



The subcommittee deferred consideration of the suggestion that the waiver form list specific categories of types of proposed actions so that the person executing the form could check one or more of them. If the form included this type of list, the person completing the form would not have to type or write in a statement of the specific types of proposed actions being waived where the waiver was for less than all types of proposed actions.

STUDY L-1037 - ESTATE AND TRUST CODE  
(ESTATE MANAGEMENT)

The Commission considered Memorandum 86-89, the attached Recommendation Relating to Probate Law (Estate Management), and the First, Second, Third, and Fourth Supplements to Memorandum 86-89. The Commission also considered three letters handed out at the meeting (letter of 10/9/86 from Ken Klug for Team 2, and two letters of 10/16/86 from Neal Wells for Team 3), copies of which are attached to these Minutes as Exhibits 3, 4, and 5, respectively.

The Commission decided to include the estate management recommendation in its 1987 legislative program. The operative date of the bill should be delayed six months to July 1, 1988, to give the bench and bar time to become familiar with the new provisions.

The Commission decided to include in the bill revisions to the powers and duties provisions of guardianship-conservatorship law and trust law to conform to the estate management recommendation.

The Commission made the following decisions concerning the draft statute:

Letter of Transmittal

The first sentence of the letter of transmittal reads, "The California Legislature has directed the California Law Revision Commission to study probate law and procedure." After this sentence the Commission added the following: "The Commission has given this topic its highest priority."

The first two sentences of the last paragraph were revised to read:  
The narrative explanation at the beginning of this recommendation indicates the principal substantive revisions

that the proposed legislation would make in existing law. A Comment following each section of the proposed legislation gives the source of the section and indicates any changes which the section would make in existing law.

Preliminary Part

Footnote 27 should be revised to read as follows:

27. Under the proposed legislation, arbitration is conducted under Code of Civil Procedure Sections 1280-1288.8. This is "conventional" or "ordinary" arbitration. See 6 B. Witkin, California Procedure Proceedings Without Trial § 320, at 612-13 (3d ed. 1985). In conventional or ordinary arbitration, there is no right to trial de novo, and, although the court may correct or vacate an award, the grounds for so doing are limited. See Code Civ. Proc. §§ 1285-1288.8. Conventional or ordinary arbitration differs markedly from "judicial" arbitration under the 1978 mandatory judicial arbitration statute and rules of court. See Code Civ. Proc. §§ 1141.10-1141.31; California Rules of Court 1600-1617; 6 B. Witkin, *supra*.

§ 9600. Duty to manage estate using ordinary care and diligence

The following was added at the end of the Comment:

In determining when a power must be exercised and when it may not be exercised, the personal representative has an area of discretion. For example, the personal representative has some discretion in determining the amount of insurance, and so long as the amount of insurance is not unreasonably high or low under the circumstances, the personal representative has complied with the duty to use ordinary care and diligence.

§ 9601. Measure of liability for breach of fiduciary duty

The introductory clause of subdivision (a) was revised as follows:

9601. (a) If a personal representative breaches a fiduciary duty, the personal representative is chargeable with any ~~one or more~~ of the following that ~~are~~ is appropriate under the circumstances:

This revision makes Section 9601 consistent with trust law (Section 16440). The Comment to Section 9601 should note that the court has discretion to choose the measure of liability from the three listed in the section that is appropriate under the circumstances. The staff should include a similar section in guardianship-conservatorship law. (Eventually, this may be a general provision applicable to personal representatives, guardians, conservators, and trustees.)

§ 9603. Other remedies not affected

A section similar to Section 9603 should be added to guardianship-conservatorship law.

§ 9611. Instructions from or confirmation by court

The following should be added to Section 9611: "For the purposes of this section, Section 9613 does not preclude a petition for instructions under this section."

The following should be added to the Comment to Section 9611:

A petition for instructions is used to obtain court authorization to incorporate the decedent's unincorporated business, there being no specific provision governing that matter. For a provision dealing with incorporation of decedent's business under independent administration authority, see Section 10554(b).

§ 9613. Order compelling personal representative to act or not to act

The Commission approved the addition of a new Section 9613 to read as follows:

9613. (a) On petition of any interested person, and upon a showing that if the petition is not granted the estate will suffer irreparable injury, the court may direct the personal representative to act or not to act concerning the estate. The order may include such terms and conditions as the court determines to be appropriate under the circumstances.

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

The Comment to Section 9613 should note that the section does not limit the right of a personal representative to petition for instructions under Section 9611. See discussion under Section 9611 *supra*.

§ 9620. Submission of dispute to temporary judge

Subdivision (b) of Section 9620 was revised as follows:

(b) Enter into an agreement in writing with the third person that a judge ~~of the court~~, pursuant to the agreement and with the written consent of the judge, both filed with the clerk within the time specified in Section 714 for bringing an independent suit on the matter in dispute, may hear and determine the dispute pursuant to the procedure provided in subdivision (a).

The following should be added to the Comment to Section 9620: "Section 9620 is designed to reduce the cost of administration of

estates and to ease the court's workload by encouraging disposition of disputes by summary reference proceedings rather than by litigation. See Review of Selected 1968 Code Legislation, at 226-27 (Cal. Cont. Ed. Bar 1968)."

§ 9621. Submission of dispute to arbitration

In the third sentence of Section 9621, "been" was changed to "be".

§ 9630. Authority of joint personal representatives to act

Subdivision (b) of Section 9630 was revised as follows:

(b) If one of the joint personal representatives dies or is removed or resigns, the powers and duties continue in the remaining joint personal ~~representative--or~~ representatives until further appointment is made by the court.

For the purpose of the 1987 legislation, the Commission decided to keep Section 9630 where it is presently located, rather than moving it into the portion concerning appointment and qualification of personal representatives.

§ 9631. Liability of joint personal representative for breach of duty by another personal representative

In subdivision (c), "July 1, 1988," should be inserted in place of "[the date this section becomes operative]". A section comparable to Section 9631 should be added to guardianship-conservatorship law.

§ 9650. Possession and management of decedent's estate

Subdivision (b) was revised as follows:

(b) The personal representative shall pay taxes on, and take all steps necessary reasonably necessary for the management, protection, and preservation of, the estate in his or her possession.

The next to last paragraph in the Comment should be made clearer by explaining the significance of the time to file or present claims under existing law.

§ 9652. Duty to keep cash invested

Subdivision (c) was revised as follows:

(c) The requirement of subdivision (a) does not apply to the extent that the testator's will so provides.

§ 9653. Duty to recover property transferred in fraud of creditors

The Commission considered the comments on Section 9653 in Mr. Klug's letter (Exhibit 3). The Comment to Section 9653 should make clear that the section does not deal with transfers made during lifetime to be effective at death, such as joint bank accounts, Totten trusts, conditional deeds, and revocable trusts. If the staff cannot write a Comment satisfactory to Mr. Klug and the State Bar, Section 9653 should be deleted from the proposed legislation.

§ 9654. Action by heirs or devisees for possession or to quiet title to real property

Section 9654 was revised as follows:

9654. The heirs or devisees may themselves, or jointly with the personal representative, maintain an action for possession of ~~real~~ property or to quiet title to ~~real~~ property against any person except the personal representative.

The Comment should note that Section 9654 extends the law to apply to personal property as well as to real property.

§ 9655. Voting rights with respect to corporate shares or memberships or property

The Comment should note that, as used in Section 9655, "proxies" means both general and limited proxies. Cf. Prob. Code § 591.6(f). In the second paragraph of the Comment, "this change is nonsubstantive" should be changed to "this change is not significant."

§ 9700. Savings accounts

Section 9700 was revised as follows:

9700. (a) The personal representative may ~~do any of the following:~~

~~(1) Deposit money belonging to the estate in a bank in this state or in a trust company.~~

~~(2) May invest money belonging to the estate in an account in an insured savings and loan association in this state or in shares of an insured credit union in this state~~  
deposit money belonging to the estate in an insured account in a financial institution in this state.

(b) Unless otherwise provided by court order, the money deposited ~~or invested~~ under this section may be withdrawn without order of the court.

The requirement that the financial institution be "in this state" appears to mean that it shall have a branch or office in this state,

not that it must be incorporated in this state. The staff should check this and expand the Comment to make this clear.

The Commission discussed whether the personal representative should be authorized to deposit estate funds in a brokerage cash management account without court order. The State Bar agreed to consider the matter and write to the Commission for consideration at a future meeting. The Commission thought that, if this is to be authorized, there should be a requirement that deposited funds be insured against loss, and insurance should be obtainable at a cost that is not prohibitive.

§ 9701. Deposit of personal property with trust company

Section 9701 was revised as follows:

9701. The personal representative may deposit personal property of the estate for safekeeping with a trust company. Unless otherwise provided by court order, the personal property may be withdrawn without order of the court.

Section 9701 replaces Probate Code Section 586 which permitted personal assets to be deposited with a trust company and bond reduced "as provided by Division 1 of the Financial Code." The Comment to Section 9701 indicates that bond may be reduced only if the property may not be withdrawn without court order, citing Probate Code Section 541.1 and Financial Code Section 1586. The Commission approved the rule stated in the Comment. The staff should check to see if this continues existing law or changes it, and make this clear in the Comment.

§ 9702. Deposit of securities in securities depository

Section 9702 was revised as follows:

9702. ~~(a) As used in this section, "securities depository" means a securities depository, as defined in Section 30004 of the Financial Code, which is either licensed under Chapter 2 (commencing with Section 30200) of Division 14 of the Financial Code or is exempted from such licensing by Section 30005 or 30006 of the Financial Code.~~

~~(b) Securities (a) A trust company serving as personal representative may deposit securities that constitute all or part of the estate may be deposited in a securities depository as provided in Section 775 of the Financial Code.~~

~~(e) (b) If the securities have been deposited with a trust company pursuant to Section 9701, the trust company may deposit the securities in a securities depository as provided in subdivision (b) Section 775 of the Financial Code.~~

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

Conforming revisions should be made to the comparable sections in guardianship-conservatorship law (Section 2455) and trust law (Section 16239), to recognize that only a trust company is eligible for membership in a securities depository, and an individual is not.

§ 9703. Accounts and deposits withdrawable only upon court order

Section 9703 was revised as follows:

9703. (a) Upon application of the personal representative, the court may, with or without notice, order that +  
~~---(a) All or a portion of the money of the estate or other personal property be deposited in a bank in this state or in a trust company or be invested in an account in an insured savings and loan association in this state or in shares of an insured credit union in this state, pursuant to Section 9700 or 9701 subject to withdrawal only upon authorization of the court.~~

~~(b) All or a portion of the personal property of the estate be deposited with a trust company, subject to withdrawal only upon authorization of the court. The personal representative shall deliver a copy of the court order to the financial institution at the time the deposit is made.~~

~~(c) No financial institution accepting a deposit pursuant to Section 9700 or 9701 shall be on notice of the existence of an order that the money or property is subject to withdrawal only upon authorization of the court unless it has actual notice of the order.~~

The provisions for reducing bond (existing Section 541.1) should be revised to say that there shall be no reduction of bond until evidence is presented to the court that, under the terms of the account, the money or property may not be withdrawn without court authorization.

§ 9704. Direct distribution by depository

Section 9704 was revised as follows:

9704. When a decree is rendered distributing money or personal property of an estate deposited with a bank, financial institution, trust company, ~~savings--and--loan association, credit union,~~ or securities depository pursuant to this article, the bank, financial institution, trust company, ~~savings--and--loan association, credit union,~~ or securities depository may deliver the property directly to the distributees and shall file receipts therefor with the clerk.

§ 9705. Interest on deposits by trust company

The Commission rejected the revision to Section 9705 proposed in the Second Supplement, and approved the section as set out in the draft attached to the basic Memo (86-89).

The first two sentences of the Comment were revised to read:

Comment. Subdivision (a) of Section 9705 restates former Probate Code Section 920.5 without substantive change. The reference in the introductory clause to an "association" is new. See Fin. Code § 1502 (national banking association authorized to transact trust business).

The fifth sentence of the Comment was revised to read:

The time within which the estate may be distributed, the time of the receipt of the funds, and the immediate need for funds in order to meet the requirements of administration are all factors to be considered in determining the type of account in which the funds should be deposited.

§ 9730. Investments permitted without prior court authorization

The introductory clause and subdivision (a) of Section 9730 were revised as follows:

9730. Pending settlement of the estate, the personal representative may invest moneys of the estate in possession of the personal representative in any one or more of the following:

The words "or reinvestment" should be deleted from subdivisions (a) and (b).

The staff either should include under "CROSS-REFERENCES" a reference to the provision of the Independent Administration of Estates Act that authorizes investment in securities eligible for investment of surplus state money, or should add the following to the end of the Comment:

For a provision authorizing investment under independent administration authority in eligible securities for the investment of surplus state moneys as provided in Section 16430 of the Government Code, see Section 10502.

§ 9731. Investment in federal or state securities with court authorization

It seems anomalous that a personal representative acting with court authorization under Section 9731 may invest only in securities of

the United States or of the State of California, while a personal representative acting without court supervision under the Independent Administration of Estates Act may invest in broad range of securities. See Prob. Code § 591.6(b); Gov't Code § 16430. The Commission was satisfied with the scope of Section 9731. The staff should consider whether independent administration authority should be narrowed. There should either be a cross-reference to the independent administration provision or a sentence added to the Comment as under Section 9730 *supra*.

§ 9732. Investment of money as provided in will

Subdivision (c) of Section 9732 requires notice to known devisees of the property proposed to be invested, or, if the property is devised to a trust or trustee, to the trustee or person nominated as trustee and to all persons in being who may participate in corpus or income of the trust. Concern was expressed about the breadth of this provision, particularly in requiring notice to contingent beneficiaries. It was suggested that the section might be limited to require notice to those presently entitled to income or who will be entitled to present income when the trust is funded. Cf. Prob. Code § 15804 (trust law). The Commission wanted to avoid having to give notice to unborn beneficiaries. However, the Commission thought that to limit notice to present income beneficiaries would be too narrow.

Concern was also expressed about the problem of giving notice to minors: Must a guardian ad litem be appointed for the minor?

The staff should consider how the notice might be made narrower and more certain, taking into account the new trust law. Team 4 of the State Bar is studying this matter. The State Bar agreed to give the matter priority and to send its suggestions to the staff.

The Commission decided to delete subdivision (e) (renewal, modification, or termination of order) from Section 9732, and to replace it with a general provision.

§ 9734. Exercise of restricted stock options

The word "stock" should be deleted from the lead line.

§ 9736. Holding securities in name of nominee or in other form

A new section 9736 was added to Chapter 4 (investments and purchase of property) to read:

9736. The personal representative may hold a security in the name of a nominee or in any other form without disclosure of the estate so that title to the security may pass by delivery, but the personal representative is liable for any act of the nominee in connection with the security so held.

The Commission was informed that it is existing practice for a personal representative to permit a brokerage to hold decedent's securities in street name. See also 1 California Decedent Estate Administration § 16.29, at 634 (Cal. Cont. Ed. Bar 1971); Sections 591.6(h) (independent administration), 16238 (trust law). Thus Section 9736 will codify existing practice.

§ 9760. Operation of decedent's business other than partnership

Subdivision (e) of Section 9760 (modification or termination of order) may go into a general provision.

§ 9761-9763. Partnerships

The Commission approved Sections 9761-9763 in the Third Supplement to Memo 86-89, to replace those sections in the draft attached to the basic Memo (86-89), with the following revisions:

9761. If a partnership existed between the decedent and another person at the time of the decedent's death, on application of the personal representative, the court [or a judge thereof] may order the surviving partner to render an account pursuant to Section 15043, 15510, or 15634 of the Corporations Code. An order under this paragraph may be enforced by the court's power to punish for contempt.

9762. (a) After authorization by order of court upon a showing that it would be to the advantage of the estate and in the best interest of the interested persons, the personal representative may continue as a general or a limited partner in any partnership in which the decedent was a general partner at the time of death. In its order, the court may specify any terms and conditions of the personal representative's participation as a partner that the court determines are to the advantage of the estate and in the best interest of the interested persons, but any terms and conditions that are inconsistent with the terms of any written partnership agreement are subject to the written consent of all of the surviving partners.

(b) If there is a written partnership agreement permitting the decedent's personal representative to participate as a partner, the personal representative has all the rights, powers, duties, and obligations provided in the written

partnership agreement, except as otherwise ordered by the court pursuant to subdivision (a).

(c) If there is not a written partnership agreement, the personal representative has the rights, powers, duties, and obligations that the court specifies in its order pursuant to subdivision (a).

(d) To obtain an order pursuant to this section, the personal representative or any interested person shall file a petition showing that the order requested would be to the advantage of the estate and in the best interest of the interested persons. Notice of the hearing on the petition shall be given for the period and in the manner provided by Section [1200.5]. In addition, unless the court otherwise orders, the petitioner, not less than 10 days before the hearing, shall cause notice of hearing and a copy of the petition to be mailed to each of the surviving general partners at his or her last known address.

9763. {(a) If the decedent was a general partner, the personal representative may institute and maintain any action against the surviving partner that the decedent could have instituted and maintained.}

(b) The personal representative may exercise the decedent's rights as a limited partner as provided in Section 15675 of the Corporations Code.

The Commission was concerned that Section 9762 appears to authorize the personal representative to continue in a partnership which requires a professional license, such as a law partnership or a medical partnership. The staff should consider adding language to the section or Comment to make clear that the section does not authorize the personal representative to continue in a partnership where the law establishes requirements for the partners that the personal representative lacks.

§ 9782. Notice of proposed disposition or abandonment

In subdivision (a), "9870" should be changed to "9780". The text of Section 9783 should be put into a new subdivision (c) of Section 9782. Sections 9784-9789 should be renumbered accordingly.

§ 9784. Objection to proposed disposition or abandonment

The words "or another applicable provision of this code" should be deleted from the end of Section 9784. Section 9784 will be renumbered as Section 9783.

§ 9785. Restraining order

A provision should be added to Section 9785 to permit the court to require a person seeking a restraining order to pay the costs of

storing and protecting the property, or to provide security (by bond or cash deposit) that those costs will be paid, as a condition of obtaining the order. Section 9785 will be renumbered as Section 9784.

§ 9788. Waiver of right to court review

A question was raised concerning the requirement of subdivision (b) of Section 9788 that a person seeking review of the disposition or abandonment must show by "clear and convincing evidence" that the personal representative violated a fiduciary duty. This language should be conformed to the comparable provision in the draft of the Independent Administration of Estates Act (Section 10589). Section 9788 will be renumbered as Section 9787.

§ 9800. Borrowing money, refinancing, and encumbering property

The Commission considered whether the provision in Section 9800 for the court to authorize the personal representative to borrow money to improve estate property should be broadened to give general authority to improve estate property, whether or not money is borrowed for that purpose. Cf. Prob. Code § 591.6(e) (power to make ordinary or extraordinary repairs or alterations). There was sentiment that the personal representative should maintain, but not improve, the property. The Commission concluded that existing practice is satisfactory and that specific statutory authority is not needed.

A conforming revision is needed in the trust law (Section 16228) to use the Commercial Code concept of a "security interest" in personal property, rather than a "pledge" of personal property.

§ 9802. Petition

Subdivision (c) (written consent of surviving spouse shall accompany petition) should be deleted from Section 9802. Subdivision (c) of Section 9804 should be revised to provide that the order may be made only if the written consent of the surviving spouse is filed with the court.

§ 9804. Hearing; order

Subdivision (c) of Section 9804 should be revised as follows:

(c) Where the surviving spouse has elected to have his or her share of the community real property administered in the decedent's estate, an order authorizing or requiring the personal representative to borrow money to be secured by a mortgage or deed of trust upon the real property of the estate, or any part thereof, may be made only if the court ~~is~~

~~satisfied that the surviving spouse has given written consent to the order of the surviving spouse has been filed with the court.~~

§ 9805. Liability of personal representative

Section 9705 was revised as follows:

9705. The note and the mortgage or deed of trust or other instrument creating the security interest, if any, shall be signed by the personal representative. The personal representative is not personally liable on the note and the mortgage or deed of trust or other instrument by reason of so signing.

§ 9820. Authority to sue and defend

Section 9820 was revised as follows:

9820. The personal representative may:

- (a) Institute and maintain actions and proceedings for the benefit of the estate.
- (b) Defend actions and proceedings against the decedent or the personal representative, or the estate.

The Comment to Section 9820 should note that the section refers to defending actions and proceedings against the personal representative in his or her representative capacity.

§ 9822. Action on bond of former personal representative

Section 9822 refers to "an action on the bond." The section or the Comment should make clear that liability on the bond may be enforced on motion, and not only by an action. See Code Civ. Proc. §§ 995.020, 996.440(a); Estate of Johnson, 162 Cal. App.3d 917, 919, 208 Cal. Rptr. 821 (1984) (liability on bond determined on settlement of account).

§ 9830. Authority to compromise claims and actions and to extend, renew, or modify obligations

A new paragraph (3) was added to subdivision (a) to read:

- (3) Release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

The Comment should note that court approval is required for a release under paragraph (3) if it affects title to real property (Section 9832). Cf. Section 10527(b) (independent administration).

The fourth sentence of the Comment reads: "Under Section 9830, the personal representative may, but is not required to, obtain court

authorization." The words "unless otherwise provided by statute," should be added to this sentence after "9830,".

The staff should consider whether Section 9830 should be broadened to require court authorization of a compromise or settlement of a claim by the personal representative "directly or indirectly." Cf. Section 9880 (personal representative may not purchase estate property "directly or indirectly" without court authorization).

§ 9831. Compromise before time for filing creditor's claims has expired

The first sentence of the Comment, which begins "Section 9831 restates without substantive change", should be revised to say "Section 9831 replaces . . . ."

§ 9834. Claim of estate against personal representative; debt of personal representative to estate

The Commission decided not to expand Section 9834 to require court authorization of a compromise or settlement of a claim by the estate against the spouse or a relative of the personal representative.

§ 9836. Court having authority to give authorization

Section 9836 was revised as follows:

~~9836. (a) When the claim or matter is the subject of a pending action or proceeding, the court authorization required by this chapter shall be obtained from both of the following courts:~~

~~(1) The court in which the action or proceeding is pending.~~

~~(2) The court in which the estate is being administered.~~

~~(b) If the claim or matter is not the subject of a pending action or proceeding, the~~ The court authorization required by this chapter shall be obtained from the court in which the estate is being administered.

The Comment, or perhaps Section 9836, should note that the section applies whether or not the claim or matter is the subject of a pending action or proceeding.

§ 9837. Petition for court authorization; notice

Subdivision (a) of Section 9837 was revised as follows:

9837. (a) A petition for an order authorizing a compromise, settlement, extension, renewal, or modification under this chapter may be filed by any of the following:

(1) The personal representative.

(2) Any interested person ~~with the~~ who has obtained the written approval of the personal representative to file the petition.

§ 9850. Acceptance of deed in lieu of foreclosure or trustee's sale

The Commission was concerned about the risk to the estate of accepting a deed in lieu of foreclosure where the property is subject to an intervening lien. The Commission decided to deal with this concern by revising the first sentence of subdivision (b) of Section 9850 as follows:

(b) To obtain an order under this section, the personal representative or any interested person shall file a petition showing by clear and convincing evidence the advantage to the estate of accepting the deed. . . .

§ 9861. Notice of hearing

Subdivision (b) of Section 9861 was revised as follows:

(b) Except for those persons given notice pursuant to subdivision (a), notice of the hearing on the petition, together with a copy of the petition, also shall be given for the period and in the manner provided in [Section 1200.5] to all of the following:

(1) ~~To all known heirs and devisees, whether or not they have requested special notice or given notice of appearance~~ Each devisee whose interest in the estate is affected by the proposed purchase.

(2) ~~To the persons described in Section [1200.5]~~ Each heir of the decedent if the estate is an intestate estate.

(3) Each person who has filed a request for special notice pursuant to Section [1202].

§ 9883. Petition for order under Section 9881 or 9882

Subdivision (b) of Section 9883 was revised as follows:

(b) Notice of the hearing on the petition shall be given for the period and in the manner required by ~~Sections~~ Section [1200.5] to all of the following:

(1) ~~All heirs and devisees known to the petitioner, whether or not they have requested special notice or given notice of appearance~~ Each devisee whose interest in the estate is affected by the proposed purchase.

(2) ~~All other persons described in Section [1200.5]~~ Each heir of the decedent if the estate is an intestate estate.

(3) Each person who has filed a request for special notice pursuant to Section [1202].

A provision should be added to Section 9883 to make clear that, if court confirmation of sale is required, court approval of purchase by the personal representative may be made at the time of confirmation.

§ 9921. Petition

Section 9921 was revised as follows:

9921. To obtain an order under this chapter, the personal representative or any interested person shall file a petition ~~showing that the exchange would be to the advantage of the estate,~~ containing all of the following:

(a) A description of the property.

(b) The terms and conditions of the proposed exchange.

(c) A showing of the advantage to the estate to accrue from the exchange.

§ 9941. Court authorization for lease

Section 9941 should be revised to make clearer that the personal representative leases estate property on behalf of the estate as lessor.

§ 9944. Notice of hearing

The Commission decided to keep for the time being the 20-day notice provision of subdivision (b) of Section 9944. The staff should review this special provision when the general notice provisions are drafted.

§ 9945. Hearing and order

The first sentence of subdivision (b) of Section 9945 was revised as follows:

(b) If the court is satisfied that it will be to the advantage of the estate, and, if the lease is for more than 10 years, that it is to the benefit of interested persons, the court shall make an order authorizing the personal representative to make the lease to the person and on the terms and conditions stated in the order. . . .

§ 9946. Terms and conditions of leases

The staff should consider whether subdivision (b) of Section 9946 should be made consistent with the mineral lease provision of the new trust law (Section 16232). See also Section 10531 (Independent Administration of Estates Act). Subdivision (b) should include a reference to a lease for the production of geothermal resources. The Commission asked to see the revised language before the recommendation is printed.

§ 9947. Maximum term of lease

Subdivision (d) (lease for growing of asparagus) was deleted from Section 9947. The Commission could see no justification for permitting the leasing of estate property for longer than 10 years over the objection of an heir or devisee in this one limited class of cases.

Subdivision (c) should include a reference to a lease for the production of geothermal resources.

§ 9948. Effectiveness of lease

Subdivision (c) of Section 9948 provides: "No omission, error, or irregularity in the proceedings under this chapter shall impair or invalidate the proceedings or the lease made pursuant to an order made under this chapter." There should be a comparable provision applying to sales, exchanges, and options. The staff should consider whether it should be a general provision, or whether separate provision should go in each chapter where it would apply. Cf. Section 10314(c) (conveyance vests all right, title, and interest of estate).

§ 9962. Minimum purchase price

Section 9962 was revised as follows:

9962. The purchase price of the real property subject to the option shall be at least 90 percent of the appraised value of the real property. The appraisal shall be one made by a probate referee within one year prior to the filing hearing of the petition.

See Section 10309 for a comparable revision. The staff should check to see if there are any other comparable sections that should be conformed.

§ 9965. Option expires unless notice of exercise recorded

The Comment to Section 9965 should note that, if an option granted pursuant to this chapter is recorded, the option expires of record unless a notice of exercise or an extension of the option is recorded within six months after the option expires according to its terms or, if the option has no expiration date, within six months after the option is recorded. Civ. Code § 884.010.

The lead line to Section 9965 is inaccurate, and should be revised to say, "Expiration of record of recorded option."

§ 9981. Filing of petition; persons who may file; time for filing

Subdivision (a) of Section 9981 was revised as follows:

9981. (a) To obtain an order under this chapter, the personal representative or the person given the option to purchase the property shall file a petition within ~~any-time limits provided in the will~~ 30 days after the option is exercised.

The staff should consider whether subdivisions (b) and (c) of Section 9981 might more appropriately go in Section 9980.

§ 10150. Contract with agent or broker

A question was raised about the provision that permits the personal representative to contract with a "multiple group of licensed real estate brokers." The staff should ensure that this provision is consistent with the law governing real estate sales outside probate. See generally Bus. & Prof. Code § 10137.1 (partnership of brokers); Civ. Code § 1087 (multiple listing service); 1 H. Miller & M. Starr, Current Law of California Real Estate § 6.5, at 186 (corporation as licensee); 32 St. B.J. 586 (1957) (background and effect of quoted language).

§ 10162. Limitation on compensation of agent or broker producing successful overbidder

Section 10162 limits the commission of the broker for the successful overbidder to one-half the difference between the original and successful bids. This is satisfactory where there are only two brokers involved -- the broker who has an exclusive listing and produces the original bidder (Broker A) and the broker for the successful overbidder (Broker C). However, when there are three brokers involved -- the exclusive listing broker (Broker A), a cooperating broker who produces the original bidder (Broker B), and the broker for the successful overbidder (Broker C) -- the half-the-difference limit of Section 10162 results in a lower total commission than the estate would have to pay if there had been no overbid. This is illustrated by Example 6 in the Comment to Section 10161. The Commission thought the half-the-difference limit of Section 10162 should not be applied so that the total commission is less than if there had been no overbid. This may be accomplished by revising Section 10162 as follows:

10162. (a) The compensation of the agent or broker who produces the successful bidder shall not exceed one-half of the compensation on the amount of the original bid plus one-half of the difference between the amount of the bid in the original return and the amount of the successful bid.

(b) Subdivision (a) does not limit the compensation of either of the following:

(1) The agent or broker who produced the original bid which was returned to the court for confirmation.

(2) The agent or broker who holds a contract under Section 10150 granting him or her the exclusive right to sell the property.

Example 6 in the Comment to Section 10161 must be revised accordingly.

§ 10165. Compensation where sale made on increased bid by purchaser represented by agent or broker and either the original bid returned to court was made by a purchaser procured by another agent or broker or there is another agent or broker who holds exclusive right to sell contract

The Commission considered whether subdivision (c)(3) should be revised to provide that if the brokers are unable to agree on how their commission is to be split, the court shall determine it. The Commission rejected this as tending to clog the probate calendar with disputes between real estate brokers. The Commission approved subdivision (c)(3) as drafted (if no agreement, commission split 50-50).

The Commission discussed whether the commission should be split equally among the exclusive listing broker (Broker A), the cooperating broker who returns the original bid to court (Broker B), and the broker representing the successful overbidder (Broker C) -- one-third to each. The Commission decided to keep the allocation of Section 10165 (roughly half to Broker C and one-quarter each to Brokers A and B).

§ 10200. Sale or surrender for redemption or conversion of securities

Paragraph (4) of subdivision (e) was revised as follows:

(e) No notice of sale or of the redemption or conversion need be given if any of the following conditions is satisfied:

(4) The securities are to be surrendered for redemption or conversion ~~are listed on an established stock or bond exchange or are securities designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., and the redemption or conversion is at a price or value not less than the market price on the date of the redemption or conversion.~~

The staff should consider whether the provision specifying the contents of a notice of sale of personal property (Section 10250) is adequate for a notice of redemption or conversion given under Section 10200.

§ 10201. Sale or withdrawal of savings accounts and mutual capital certificates

Section 10201 applies to savings accounts and mutual capital certificates of savings and loan associations. The staff should consider whether a similar provision is needed for credit unions.

§ 10202. Sale of subscription rights

Section 10202 permits sale of subscription rights without court order, but does not deal with the exercise of such rights. Cf. Section 9734 (court may authorize personal representative to exercise nontransferable stock option). Apparently the question of exercise of subscription rights is now dealt with on a petition for instructions. The Commission thought there should be an express provision governing the matter, and that court authorization should be required. The staff should draft a provision that if an estate by reason of owning securities also owns or receives subscription rights for the purchase of additional securities, the personal representative may exercise those rights with court authorization on noticed hearing if the court finds that it is to the advantage of the estate.

The Comment should note that the acts of the personal representative are subject to later court review on the accounting. There should be an express provision to that effect in the accounting provisions.

§ 10203. Decedent's leasehold interest

Paragraph (3) of subdivision (b) of Section 10203 was revised as follows:

(b) The sale of a leasehold interest shall be made as in the case of the sale of real property of the estate if the interest to be sold consists of any of the following:

. . .  
(3) ~~An oil or gas leasehold interest~~ A lease for the purpose of production of minerals, oil, gas, or other hydrocarbon substances, or geothermal resources.

Paragraph (1) of subdivision (b) refers to a lease with an unexpired term of 10 years or longer. The Comment should make clear that this includes a lease where the lessee has a right to renew the lease and the lease, if renewed, would have an unexpired term of 10 years or longer. The staff should also check the Comments to Sections 9940-9948 (leases generally) to make sure this concept is reflected there. See, e.g., the Comment to Section 9940 ("[i]f the lease gives the lessee an option to extend the lease beyond a one-year term, court approval of the lease is required").

§ 10206. Decedent's contract right to purchase real property

The Commission reaffirmed its approval of subdivision (b) which provides that title to the real property does not pass until the

purchaser gives bond. Existing law provides that the court may not confirm the sale until bond is given. The Commission thought the concern that title record would not reflect whether bond was given may be addressed either by filing the bond with the court (Code Civ. Proc. § 995.340) or by recording it (Gov't Code § 27280). If the bond is filed with the court, it is entered in the register of actions (Code Civ. Proc. § 995.350), so title companies can determine whether bond has been filed.

§ 10257. Sale for cash or on credit

The last sentence of Section 10257 was revised as follows:

The interest of the personal representative in the note and security interest shall be in the same ~~tenancy~~ interest and in the same proportions as the estate's interest in the property prior to the sale.

§ 10309. Minimum price for private sale of real property

Subdivision (a) of Section 10309 was revised as follows:

10309. (a) Except as provided in Section 10207, no sale of real property at private sale shall be confirmed by the court unless all of the following conditions are satisfied:

(1) The real property has been appraised within one year of the date of the sale confirmation hearing.

(2) The valuation date used in the appraisal described in paragraph (1) is within one year prior to the date of the sale confirmation hearing.

(3) The sum offered for the property is at least 90 percent of the appraised value of the property as determined by the appraisal described in paragraph (1).

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

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

(2) Where the property has not been appraised within one year before the date of the sale confirmation hearing.

(3) Where the valuation date used in the latest appraisal is more than one year before the date of the sale confirmation hearing.

(4) Where the court is satisfied that the latest appraisal is too high or too low.

(c) . . . .

§ 10313. Order confirming or vacating sale

Paragraph (7) of subdivision (a) of Section 10313 was deleted to conform to Section 10206 (court may confirm sale whether or not bond has been given):

~~(7) If a bond is required by Section 10206 (sale of decedent's contract right to purchase real property), the bond has been furnished.~~

The Commission approved the recommendation to print after the foregoing revisions are made, subject to the Commission's request to see the revised language of Section 9946 before printing.

APPROVED AS SUBMITTED \_\_\_\_\_

APPROVED AS CORRECTED \_\_\_\_\_ (for  
corrections, see Minutes of next  
meeting)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary

The Subcommittee determined that Sections 10500, 10501, 10502, and 10551 of the Tentative Recommendation Relating to Independent Administration should be replaced by the substance of the following:

**CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY**

**Article 1. General Provisions**

**§ 10500. Administration without court supervision**

10500. (a) Except as provided in this chapter, and subject to Chapter 4 (commencing with Section 10550) and the applicable fiduciary duties, a personal representative who has been granted authority to administer the estate under this part may administer the estate as provided in this part without court supervision, but in all other respects the personal representative shall administer the estate in the same manner as a personal representative who has not been granted authority to administer the estate under this part.

(b) Notwithstanding subdivision (a), the personal representative may obtain court supervision as provided in this code of any action to be taken by the personal representative during administration of the estate.

**Comment.** Subdivision (a) of Section 10500 restates the first sentence and the first portion of the second sentence of former Probate Code Section 591.2 without substantive change. See also Section 10401 (defining "court supervision"). Subdivision (b) restates the first sentence of subdivision (b) of former Probate Code Section 591.2 without substantive change.

As the introductory clause of Section 10500 recognizes, a personal representative who has been granted only limited authority under this part may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (limited authority excludes power to sell, exchange, or grant option to purchase real property, or to borrow money with the loan secured by an encumbrance upon real property, using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority). Notwithstanding that independent administration authority has been granted, some actions can

be taken only under court supervision. See Section 10501 (court supervision required for allowance of commissions of personal representative, allowance of attorney's fees, settlement of accountings, preliminary and final distributions and discharge, and certain transactions involving potential conflict of interest on part of personal representative).

The introductory clause also recognizes that independent administration authority must be exercised in compliance with the provisions of this part. See Chapter 4 (commencing with Section 10550) (giving advice of proposed action). As to when advice of proposed action is required, see Article 1 (commencing with Section 10550) of Chapter 4.

The introductory clause of Section 10500 further recognizes that the personal representative acts in a fiduciary capacity in exercising the powers under this part. See also Section 10510 (introductory clause). As to when a power must or may not be exercised, see Section 9600(b). See also Section 10589 (review of action taken on motion of person who failed to object to action where there is clear and convincing proof that the personal representative violated an applicable fiduciary duty in taking the action).

Subdivision (b) of Section 10500 makes clear that the personal representative may obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure. For example, even though the personal representative has been granted independent administration powers that include the power to sell real property, the personal representative may nevertheless determine to sell the real property using the court supervised procedure for a real property sale. If the personal representative determines to use the court supervised procedure, all the requirements of the court supervised procedure apply to the same extent that they would apply if the personal representative had not been granted independent administration authority. See Section 10401 (defining "court supervision"). For example, except as provided in Sections 10301 to 10303, inclusive, the requirement that notice of sale be published must be satisfied. See Section 10300. See also Section 10303 (notice of sale need not be published where will directs or authorizes the sale).

Where the personal representative decides to obtain court supervision of an action even though the personal representative is authorized to take the action using the independent administration procedure and no other procedure is provided by statute for court supervision of the particular proposed action, the personal representative may petition for instructions under Section 9611. For example, there being no specific procedure for obtaining authority under supervised administration for incorporation of the decedent's unincorporated business, the personal representative may elect to petition for instructions under Section 9611 rather than using the advice of proposed action procedure under Section 10554. See also Section 10580(b) (personal representative may use advice of proposed action procedure for an action that could be taken without giving advice of proposed action).

CROSS-REFERENCES

Actions that can be taken only under court supervision § 10501

Definitions

Court supervision § 10401

Personal representative § 58

Fiduciary duty of personal representative § 10510

Limited independent administration authority §§ 10450(b)(2), 10452(c),  
10501(e)

Will may restrict powers § 10510

**§ 10501. Matters requiring court supervision**

10501. Notwithstanding any other provision of this part, a personal representative who has obtained authority to administer the estate under this part is required to obtain court supervision, in the manner provided in this code, for any of the following actions:

(a) Allowance of commissions of the personal representative

(b) Allowance of attorney's fees.

(c) Settlement of accountings.

(d) Preliminary and final distributions and discharge.

(e) Sale of real property, exchange of real property, grant of an option to purchase real property, or borrow money with the loan secured by an encumbrance upon real property of the estate, if the authority of the personal representative granted under this part specifically excludes the authority to take such action under the authority of this part.

(f) Sale of property of the estate to the personal representative.

(g) Exchange with the personal representative of property of the estate for other property.

(h) Grant to the personal representative of an option to purchase property of the estate.

(i) Allow, pay, or compromise a claim of the personal representative against the estate.

(j) Compromise or settle a claim, action, or proceeding by the estate against the personal representative.

(k) Extend, renew, or modify the terms of a debt or other obligation of the personal representative owing to or running in favor of the decedent or the estate.

Comment. Subdivisions (a) to (e), inclusive, of Section 10501 restate the last portion of the second sentence of subdivision (a) of

former Probate Code Section 591.2 with the addition of the language in subdivision (e) that requires court supervision if the personal representative has limited authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. Under former law, the personal representative could use independent administration authority to borrow money with the loan secured by an encumbrance upon real property of the estate even if the personal representative had only limited authority. In connection with subdivision (e) of Section 10501, see Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority).

The remainder of Section 10501 is new. Prior law did not expressly provide that the independent administration procedure could not be used for the types of actions listed in subdivisions (f) to (k), inclusive. The types of actions listed in these subdivisions are ones where there often will be a conflict of interest.

Subdivisions (f), (g), and (h) make clear that the personal representative cannot use the independent administration procedure to sell property of the estate to the personal representative, exchange estate property with the personal representative for other property, or grant to the personal representative an option to purchase property of the estate. Special supervised administration provisions govern these transactions. See, e.g., Sections 9880-9885. A purchase by or exchange with the personal representative may be accomplished only under these special provisions and is subject to their limitations and requirements. The personal representative may purchase property of the estate pursuant to a contract made during the lifetime of the decedent if the statutory supervised administration requirements are satisfied. See Section 9884. The personal representative may exercise an option to purchase property of the estate given in the will of the decedent if the statutory supervised administration requirements are satisfied. See Section 9885.

Subdivision (i) makes clear that the personal representative can not use the independent administration procedure for a claim by the personal representative against the estate. The personal representative must submit the claim for allowance or rejection by the judge pursuant to Section 703.

Subdivisions (j) and (k) preclude the use of the independent administration authority for action on a claim of the estate against the personal representative or modification of the terms of a debt or similar obligation of the personal representative to the estate. A special provision governs these transactions. See Sections 9830 and 9834.

#### CROSS-REFERENCES

##### Definitions

Court supervision § 10401  
Personal representative § 58  
Property § 62  
Real property § 68  
Limited independent administration authority §§ 10450(b)(2), 10452(c),  
10501(e)

Note. At the October meeting, the subcommittee determined that Section 10501 should be expanded to include additional transactions that cannot be taken under independent administration procedure.

Subdivision (e) has been expanded so that a personal representative with only limited independent administration authority is not authorized to use independent administration authority to borrow money with the loan secured by an encumbrance upon real property of the estate. This is a change in existing law. The effect of the expansion is to require court approval (under supervised administration) of the borrowing even where all the parties interested in the estate approve the action. This change in existing law is based on the following reasoning. The bond of the personal representative who has limited authority does not include the value of the real property in the estate. The bond does not include the value of the real property because the personal representative does not have authority to sell the real property. If the authority is not limited authority, the personal representative has authority to sell the real property (whether or not it actually is sold) and the bond of the personal representative must include the value of the real property. If the personal representative does not desire to give a bond that includes the value of the real property, the personal representative can request only limited authority. However, the existing scheme fails to recognize that the personal representative under existing law can borrow money on real property of the estate even though the personal representative has only limited authority and that the bond will not be in an amount that includes the money borrowed. To assure that the bond will protect the proceeds obtained by borrowing money upon an encumbrance on the real property, the authority to borrow the money should be excluded if the personal representative has only limited authority. This reasoning does not apply, of course, where the will or the estate beneficiaries waive the bond. The staff does not know whether the bond ordinarily is waived by the estate beneficiaries when independent administration authority is granted. If the bond ordinarily is waived when independent administration authority is granted, then the reasoning justifying changing existing law to take away the independent administration authority to borrow money on real property of the estate may be suspect.

Subdivisions (f) to (k) have been added to preclude the use of independent administration in situations where there is an actual or potential conflict of interest. This addition probably changes existing law, but existing law is unclear. At the October meeting, the subcommittee requested the staff to modify Section 10501 along these lines for review by the Commission at the November meeting. As revised, the section precludes the use of independent administration procedures even though the property to be sold to the personal representative is of small value and all the other beneficiaries of the estate wish to make the sale or where all the other beneficiaries of the estate agree that the claim of the personal representative should be paid.

The staff recommends that the revised section set out above be approved by the Commission. The justification for not including the borrowing authority when the personal representative has only limited authority is set out in some detail above. Since there are other procedures that specifically cover the situations listed in

subdivisions (f) to (k), the staff believes that those procedures should be used where there is a potential conflict of interest. The cost of preparing and filing the petition for court approval appears to be justified in the conflict of interest situation. So that the proposed legislation will be kept simple, we would not make any exception to the requirement that a petition be filed for court approval even where the personal representative is the only beneficiary of the decedent's estate or where the will or the beneficiaries of the estate waive the bond.

## Article 2. Independent Administration Powers

### § 10510. Article describes powers of personal representative who has been granted independent administration authority

10510. Except as provided in this chapter, and subject to Chapter 4 (commencing with Section 10550) and the applicable fiduciary duties, unless restricted by the will, a personal representative who has been granted authority to administer the estate under this part has the powers described in this article.

**Comment.** Section 10510 restates the introductory clause of former Section 691.6 without substantive change.

The introductory clause of Section 10510 recognizes that the personal representative acts in a fiduciary capacity in exercising the authority under this part. See also Sections 10500 (introductory clause). The personal representative is required to exercise the power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10589 (review of action taken on motion of person who failed to object to action where there is clear and convincing proof that the personal representative violated an applicable fiduciary duty in taking the action).

As the introductory clause of Section 10510 recognizes, a personal representative who has been granted only limited authority under this part may not exercise independent administration authority with respect to matters not included within the scope of the authority granted. See Section 10501(e) (limited authority excludes power to sell, exchange, or grant option to purchase real property or to borrow money secured by encumbrance on real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). The introductory clause of Section 10510 also recognizes that the will may limit the authority of the personal representative under this part.

The introductory clause of Section 10510 makes clear that independent administration authority must be exercised in compliance with the provisions of this part. See Chapter 4 (commencing with Section 10550) (advice of proposed action). As to when advice of proposed action is required, see Article 1 (commencing with Section 10550) of Chapter 4.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Will § 88

Limited independent administration authority §§ 10450(b)(2), 10452(c), 10501(e)

##### Matters requiring advice of proposed action

Accepting deed in lieu of foreclosure or trustee's sale § 10564

Annuity granted by will § 10557

Borrowing § 10555

Business of decedent

Continuing § 10554

Incorporation § 10554

Sale of § 10554

Contracts other than leases of real property § 10559

Decedent's contract to convey property § 10561

Determining decedent's claim to property held by another § 20556

Determining third-party claim § 10556

Disclaimer § 10568

Encumbering estate property § 10555

Exclusive right to sell, extending § 10567

Family allowance § 10566

Foreclosure of mortgage, accepting deed in lieu of § 10564

Funds of estate, investing § 10553

##### Leases

Personal property § 10559

Real property § 10558

##### Money

Borrowing § 10555

Investing § 10553

Option, restricted, exercise of § 10562

Option to purchase, granting § 10560

Option to purchase given in will, conveyance pursuant to § 10565

Personal property, sale or exchange § 10552

##### Real property

Accepting deed in lieu of foreclosure or trustee's sale § 10564

Alterations § 10563

Completing decedent's contract to sell § 10561

Exchange § 10551

Exclusive right to sell, extending § 10567

Lease § 10558

Option to purchase, granting § 10560

Option to purchase in will § 10565

Repairs § 10563

Sale § 10551

Sale under deed of trust, acceptance of deed in lieu of § 10564

Securities, subscription or conversion rights, exercising § 10553

Third-party claims § 10556

Matters requiring court supervision § 10501

**§ 10511. Grant of powers that any personal representative may exercise without court supervision**

10511. In addition to the powers granted to the personal representative by other sections of this article, the personal representative has all the powers that the personal representative could exercise without court supervision under this code if the personal representative had not been granted authority to administer the estate under this part.

**Comment.** Section 10511 continues the apparent effect of the phrase "in addition to any other powers granted by this code" which appeared in the introductory portion of former Probate Code Section 591.6.

The inclusion of Section 10511 makes it unnecessary to list in this article those powers that a personal representative not having independent administration authority can exercise without court supervision. This is the reason why some powers specifically listed in former Probate Code Section 591.6 are not specifically listed in this article. Accordingly, the following powers specifically listed in former Probate Code Section 591.6 are not specifically listed in this article: Power to invest in deposits in banks and savings and loan associations (authorized without court supervision by Section 9700); power to vote a security, in person or by general or limited proxy (authorized without court supervision by Section 9655); power to insure estate and personal representative (authorized without court supervision by Section 9656). Section 10511 gives the personal representative who has been granted independent administration authority these powers as well as any other powers that can be exercised without court supervision by a personal representative who has not been granted independent administration authority.

The will may restrict the exercise of the powers granted by this section. See Section 10510. See also the Comment to Section 10510.

**CROSS-REFERENCES**

**Definitions**

Court supervision § 10401

Personal representative § 58

**Note.** Section 10511 has been revised to clarify its meaning. The subcommittee at the October meeting indicated that there was a need for clarification of the section.

**§ 10512. Powers with respect to sale of property**

10512. The personal representative has the power to sell property of the estate either at public auction or private sale, and with or without notice, for such price, for cash or on credit, and upon such

terms and conditions as the personal representative may determine, and the requirements applicable to court confirmation of sales of real property (including but not limited to 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 made under authority granted under this part. This section applies to any sale made under the authority of this part on or after January 1, 1985.

**Comment.** Section 10512 restates subdivision (a) of former Probate Code Section 591.9 without substantive change. The phrase "for cash or on credit" is continued from subdivision (a) of former Probate Code Section 591.6.

The grant of the power described in Section 10512 is limited if the personal representative has limited independent administration authority; a personal representative who has been granted only limited authority may not exercise independent administration authority with respect to the sale, exchange, or granting of an option to purchase real property. See Section 10501(e) (limited authority excludes power to sell, exchange, or grant option to purchase real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). The will may restrict the exercise of the powers granted by this section. See Section 10510. See also the Comment to Section 10510. Independent administration authority may not be used where estate property is proposed to be sold to the personal representative. See Section 10501.

Section 10512 is designed to make clear that sales under independent administration authority are not subject to the statutory requirements that apply to sales made under court supervision. Thus, for example, the commission of the realtor who lists or obtains the purchaser of real property sold under independent administration authority is not subject to the approval of the court and the provisions concerning contracts and commissions of agents or brokers (Sections 10150-10166) are not applicable. Nor does the 90-percent-of-appraised-value requirement apply when a sale is under independent administration authority. Nor does the court examine into the efforts of the personal representative to obtain the highest and best price for the property reasonably attainable as is the case where there is a court hearing on the confirmation of a real property sale. Publication of notice of sale is not required where the sale is made under independent administration authority. Likewise, notice of sale, court confirmation, and approval of the commission of the agent, broker, or auctioneer is not required where a sale of personal property is made under independent administration authority.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to sell or exchange real property (Section 10551) or to sell or exchange personal property except for certain kinds of property (Section 10552). Advice of proposed action also is required for granting an option to purchase real property (Section 10560), completing a contract by decedent to convey property (Section 10561), transferring to a person given an option to purchase in the decedent's will (Section 10565), or extending an exclusive right to sell property (Section 10567).

## CROSS-REFERENCES

### Definitions

- Personal representative § 58
- Property § 62
- Real property § 68
- Limited independent administration authority §§ 10450(b)(2), 10452(c), 10501(e)

### § 10513. Power to manage and control estate property

10513. The personal representative has the power to manage and control property of the estate.

**Comment.** Section 10513 restates without substantive change the part of the first portion of subdivision (a) of former Probate Code Section 591.6 that gave the personal representative the power to manage and control property of the estate.

The provision of subdivision (a) of former Section 591.6 relating to "exchanges" is superseded by Section 10532. The portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to "convey" property is not continued; this portion is superseded by the provisions of this article that give the personal representative the power to act with respect to specific transactions that may require the execution of a conveyance. Under this article, there must be a specific power to act in the specific circumstances (such as the power to make a sale or exchange) in order to authorize the personal representative to execute a conveyance. Where the personal representative acts under one of these specific powers, the personal representative may execute any conveyance that is necessary to effectuate the exercise of the power.

The portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to "divide" or "partition" property of the estate is not continued. Insofar as the power to "partition" related to partition proceedings, the inclusion of the word in Section 10513 is unnecessary in view of Section 10526 which authorizes the personal representative to institute, maintain, and defend actions and proceedings. Insofar as the power to "divide" or "partition" may have related to division or partition before distribution, the inclusion of this power as an independent administration power is unnecessary to authorize partition or division without court supervision if there is an agreement of the heirs or devisees. See Sections 1100-1106. If there is no agreement, the matter should be decided under the provisions of Sections 1100-1106 rather than by using the independent administration procedure.

The grant of the power described in Section 10513 is limited if the personal representative has limited independent administration authority; such a personal representative may not use the independent administration procedure with respect to matters not included within the scope of the authority granted. See Sections 10501 (matters requiring court supervision), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). In addition, the will may restrict the exercise of the

powers granted by this section. See Section 10510. See also the Comment to Section 10510. See also Section 10501 (matters requiring court supervision).

Concerning the exercise of powers described in this article, see Section 10510. As to when advice of proposed action is required, see Article 1 (commencing with Section 10550) of Chapter 4.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

Limited independent administration authority §§ 10450(b)(2), 10452(c), 10501(e)

Note. As suggested by the subcommittee at the October meeting, Section 10513 has been revised as recommended by the staff to delete the words "convey, divide, and partition" which appear in existing law.

#### § 10514. Investing in securities

10514. The personal representative has the power to invest money of the estate in eligible securities for the investment of surplus state moneys as provided for in Section 16430 of the Government Code.

Comment Section 10514 restates a portion of subdivision (b) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10514. See Section 10553.

Under Section 10511, the personal representative also has the power to invest in savings accounts (Section 9700) and in investments described in Section 9730 (direct obligations of United States maturing not later than one year from the date of making the investment, certain money market mutual funds, and common trust funds). See also Section 10515 (investment in manner provided by the will). For a more limited authority to make investments in federal or state securities under supervised administration, see Section 9731. For authorization to sell or exercise security subscription or conversion rights under independent administration authority, see Section 10520. See also 10519 (holding securities in name of nominee or in other form).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Security § 70

#### § 10515. Investing money in manner provided by will

10515. The personal representative has the power to invest money of the estate in any manner provided by the will.

**Comment** Section 10515 restates the last portion of subdivision (b) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10515. See Section 10553. As to other authorized investments for money of the estate, see Section 10514 and the Comment to that section. For the comparable provision under supervised administration, see Section 9732.

CROSS-REFERENCES

Definitions

Personal representative § 58  
Will § 88

§ 10516. Purchasing annuity granted in will

10516. The personal representative has the power to purchase from an insurer, admitted to do business in this state, an annuity expressly granted by the will to a devisee named in the will.

**Comment.** Section 10516 is a new provision. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section 9733. Advice of proposed action is required to exercise the power granted by Section 10516. See Section 10557.

CROSS-REFERENCES

Definitions

Devise § 32  
Personal representative § 58  
State § 74  
Will § 88

§ 10517. Exercising restricted option

10517. The personal representative has the power to exercise an option right that is an asset of the estate and is nontransferrable except by testate or intestate succession from the decedent.

**Comment.** Section 10517 is a new provision. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section 9734. Advice of proposed action is required to exercise the power granted by Section 10517. See Section 10562. See also Section 10520 (selling or exercising security subscription or conversion rights).

CROSS-REFERENCES

Definitions

Personal representative § 58

**§ 10518. Purchasing securities or commodities sold short**

10518. The personal representative has the power to 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 the decedent.

**Comment.** Section 10518 is a new provision. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section 9735. The power granted by Section 10518 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58

Security § 70

**§ 10519. Holding securities in name of nominee or in other form**

10518. The personal representative has the power to hold a security in the name of a nominee or in any other form without disclosure of the estate, so that title to the security may pass by delivery, but the personal representative is liable for any act of the nominee in connection with the security so held.

**Comment.** Section 10519 restates subdivision (h) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. For the comparable provision under supervised administration, see Section [XXXX (to be drafted)]. The power granted by Section 10519 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58

Security § 70

**COMPARABLE PROVISIONS**

Supervised administration §

Trusts § 16238

**Note. The subcommittee decided that a comparable provision should be included in supervised administration with the Comment stating that the provision reflects existing practice.**

**§ 10520. Selling or exercising security subscription or conversion rights**

10520. The personal representative has the power to sell or exercise security subscription or conversion rights.

**Comment.** Section 10520 restates subdivision (g) of former Probate Code Section 591.6 with the expansion of the scope of the provision to cover "securities" instead of "stock". See Section 70 (defining "security"). Concerning the exercise of powers described in this article, see Section 10510. For a general provision relating to sales of property, see Section 10512. See also Sections 10514 (investing in securities), 10517 (exercising restricted option), 10519 (holding securities in name of nominee or in other form).

The power granted by Section 10520 to sell security subscription or conversion rights may be exercised without giving advice of proposed action. See Section 10552(b)(3), (4) (sale of security subscription right; surrender of security for redemption or conversion). Although advice of proposed action is not required, the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

Advice of proposed action is required to exercise security subscription or conversion rights. See Section 10553(b).

Under supervised administration, the sale of subscription rights for the purchase of securities is permitted without court supervision. See Section 10202. As to the sale or surrender for redemption or conversion of securities under supervised administration, see Section 10200. There is no provision in supervised administration for the exercise of security subscription or conversion rights.

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58  
Security § 70

**§ 10521. Continuing operation of decedent's business**

10521. The personal representative has the following powers:

(a) The power to continue the operation of the decedent's business (as defined in Section 9760).

(b) The power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death. This power is subject to the provisions of the Uniform Partnership Act.

(c) The power to continue as a limited partner in any partnership in which the decedent was a general or limited partner at the time of death.

**Comment.** Section 10521 restates subdivision (1) of former Probate Code Section 591.6 without substantive change. The former provision did not distinguish between nonpartnership businesses and partnerships

in which the decedent was a general partner. But the provisions relating to supervised administration make that distinction, and Section 10521 has been drafted to conform to the supervised administration provisions. For the provisions governing supervised administration, see Sections 9760-9763. The power to continue as a general partner is subject to the provisions of the Uniform Partnership Act. See Corp. Code §§ 15000-15045.

The phrase "to such extent as he or she shall deem to be for the best interest of the estate and those interested therein" which was found in the former section has been omitted as unnecessary. The introductory clause of Section 10510 recognizes that the personal representative acts in a fiduciary capacity in exercising the authority under this part. See also Section 10500 (introductory clause). The personal representative is required to exercise a power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10589 (review of action taken on motion of person who failed to object to action where there is clear and convincing proof that the personal representative violated an applicable fiduciary duty in taking the action).

Advice of proposed action is required for continuing operation for a period of more than six months from the date of appointment of the personal representative of the decedent's business or for the sale or incorporation of the decedent's business. See Section 10554. Although advice of proposed action is not required in order to continue the operation for the first six months, the personal representative may give advice of proposed action for the continuance of the business during this period if the personal representative so desires. See Section 10580(b).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### § 10522. Abandoning tangible personal property

10522. The personal representative has the following powers:

(a) The power to abandon valueless tangible personal property.

(b) The power to abandon tangible personal property where the cost of collecting, maintaining, and safeguarding the property would exceed its fair market value.

**Comment.** Section 10522 supersedes subdivision (d) of former Probate Code Section 591.6. The former provision has been revised to conform to the language used in the provisions governing supervised administration. See Sections 9780-9789. Concerning the exercise of powers described in this article, see Section 10510. The power granted by Section 10522 may be exercised without giving advice of proposed action. But the personal representative may use the advice of proposed

action procedure if the personal representative so desires. See Section 10580(b).

Section 10522 applies only to tangible personal property. As to the power with respect to real property and intangible personal property, see Sections 10525 (allowing, paying, rejecting, contesting, or compromising claim against estate), 10526 (instituting and defending actions and proceedings), 10527 (compromises and settlements).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

#### § 10523. Borrowing; encumbering estate property

10523. Subject to subdivision (b), the personal representative has the following powers:

(a) The power to borrow.

(b) The power to place, replace, renew, or extend any encumbrance upon any property of the estate.

**Comment.** Section 10523 restates subdivision (c) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10523. See Section 10555. For provisions relating to supervised administration, see Sections 9800-9807.

The grant of the power to borrow money under Section 10523 is limited if the personal representative has limited independent administration authority; a personal representative who has only limited authority does not have authority to borrow money under independent administration procedures on real property of the estate. See Section 10501. If the personal representative has limited independent administration authority, the personal representative may not use the independent administration procedure with respect to matters not included within the scope of the authority granted. See Sections 10501 (matters requiring court supervision), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

**Note.** The subcommittee at the October meeting determined that a personal representative who has limited authority should not have authority to borrow money on real property of the estate. This is a change in existing law.

**§ 10524. Making repairs or alterations in property**

10524. The personal representative has the power to make ordinary or extraordinary repairs or alterations in buildings or other property.

**Comment.** Section 10524 restates subdivision (e) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. The power granted by Section 10524 may be exercised without giving advice of proposed action if the proposed action is an ordinary repair or minor alteration. Advice of proposed action is required for extraordinary repairs and alterations that are not minor. See Section 10563. See also the discussion in the Comment to Section 10563. Even though the repair is ordinary or the alteration is minor, the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). For provisions relating to supervised administration, see Sections 9800(a)(2) (borrowing money to improve or preserve property).

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58

Property § 62

**§ 10525. Acting on claims against estate**

10525. The personal representative has the power to allow, pay, reject, contest, or compromise any claim against the estate.

**Comment.** Section 10525 restates without substantive change the portion of subdivision (j) of former Probate Code Section 591.6 relating to claims against the estate. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10525. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). See also Sections 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees and for allowance, payment, or compromise of a claim of the personal representative against the estate), 10556 (advice of proposed action required for determining third-party claim to real or personal property if decedent died in possession of, or holding title to, the property). For provisions relating to claims, see Chapter 12 of Division 3 (commencing with Section 700).

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58

**§ 10526. Instituting and defending actions and proceedings**

10526. The personal representative has the following powers:

(a) The power to institute and maintain actions and proceedings for the benefit of the estate.

(b) The power to defend actions and proceedings against the decedent, the personal representative, or the estate.

**Comment.** Section 10526 restates without substantive change the portion of subdivision (j) of former Probate Code Section 591.6 which authorized the personal representative to "institute" and "defend" actions and proceedings. The language used in Section 10526 conforms to the language used in the provision relating to supervised administration. See Section 9820. The authority with respect to actions and proceedings is not limited and includes, for example, instituting, maintaining, or defending partition actions. See Section 9823.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10526. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

Advice of proposed action is required for determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property and for determining decedent's claim to real or personal property title to or possession of which is held by another. See Section 10556.

Independent administration authority may not be used to compromise or settle a claim, action, or proceeding by the estate against the personal representative. See Section 10501. Nor may independent administration authority be used to pay or compromise a claim of the personal representative against the estate, whether or not an action or proceeding is commenced on the claim. See Section 10501.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

##### § 10527. Compromises and settlements

10527. The personal representative has the following powers:

(a) The power to compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the decedent, the personal representative, or the estate.

(b) The power to release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible.

**Comment.** Section 10527 supersedes a portion of subdivision (j) of former Probate Code Section 591.6. Subdivision (a) uses language drawn from Section 9830 (supervised administration). Subdivision (b) continues language found in subdivision (j) of former Section 591.6. Concerning the exercise of powers described in this article, see Section 10510.

Advice of proposed action is not generally required to exercise the power granted by Section 10527. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). Advice of proposed action is required (1) for determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property and (2) for determining decedent's claim to real or personal property title to or possession of which is held by another. See Section 10556.

Independent administration authority may not be used to compromise or settle a claim, action, or proceeding by the estate against the personal representative. See Section 10501. Nor may independent administration authority be used to pay or compromise a claim of the personal representative against the estate, whether or not an action or proceeding is commenced on the claim. See Section 10501. See also Section 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### § 10528. Modifying terms of obligation

10528. The personal representative has the power to extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the decedent or the estate.

**Comment.** Section 10528 is a new provision. For the comparable provision under supervised administration, see Section 9830(a)(2).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not generally required to exercise the power granted by Section 10528. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

Independent administration authority may not be used to compromise or settle a claim, action, or proceeding by the estate against the personal representative or to extend, renew, or modify the terms of a debt or other obligation of the personal representative owing to or running in favor of the estate. See Section 10501. Nor may independent administration authority be used to pay or compromise a claim of the personal representative against the estate, whether or not an action or proceeding is commenced on the claim. See Section 10501. See also Section 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

§ 10529. Accepting deed in lieu of foreclosure or trustee's sale

10529. The personal representative has the power to accept a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

**Comment.** Section 10529 is a new provision. For the comparable provision under supervised administration, see Section 9850. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10529. See Section 10564.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10530. Giving partial satisfaction of mortgage or partial reconveyance under trust deed

10530. The personal representative has the power to give a partial satisfaction of a mortgage or to cause a partial reconveyance to be executed by a trustee under a trust deed held by the estate.

**Comment.** Section 10530 is a new provision. For the comparable provision under supervised administration, see Section 9851.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is not required to exercise the power granted by Section 10530. But the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10531. Leasing property of the estate

10531. The personal representative has the power to enter as lessor into a lease of property of the estate for any purpose (including but not limited to exploration for and production or removal of minerals, oil, gas, or other hydrocarbon substances or geothermal energy, including a community oil lease or a pooling or utilization agreement) for such period, within or beyond the period of administration, and for such rental or royalty and upon such other terms and conditions as the personal representative may determine.

**Comment.** Section 10531 supersedes a portion of subdivision (a) of former Probate Code Section 591.6. Section 10531 makes clear that the personal representative is authorized to determine the period, rental or royalty, and other terms and conditions of the lease. See Section 9946 (supervised administration). For the comparable provision under supervised administration, see Sections 9940-9948. For the comparable provisions of the Trust Law, see Sections 16231, 16232

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required for leasing real property for a term in excess of one year. See Section 10558. Advice of proposed action is required for leasing personal property for a period of more than two years unless the lease can be terminated by the personal representative within the two-year period. See Section 10559.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

#### COMPARABLE PROVISIONS

Supervised administration §§ 9940-9948

Trusts §§ 16231, 16232

Note. Section 10531 has been revised as suggested by the subcommittee at the October meeting to clarify that the provision applies to a lease made by the personal representative as lessor, to add "geothermal energy," and to conform the provision to the Trust Law by adding language to make clear that the authority extends to a community oil lease or utilization agreement. These are not substantive changes.

#### § 10532. Exchanging property

10532. The personal representative has the power to exchange property of the estate for other property upon such terms and conditions as the personal representative may determine.

**Comment.** Section 10532 restates without substantive change the part of the first portion of subdivision (a) of former Probate Code Section 591.6 which related to exchanges. For the comparable provision under supervised administration, see Section 9920.

The personal representative does not have the power described in Section 10532 with respect to an exchange of real property of the estate if the personal representative has limited independent administration authority; such a personal representative may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to make exchange of real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Independent administration authority may not be used for the exchange with the personal representative of property of the estate for other property. See Section 10501.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exchange real property. See Section 10551. Advice of proposed action is required to exchange personal property unless the case falls within one of the exceptions to this requirement. See Section 10552.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

#### § 10533. Granting option to purchase real property of estate

10533. The personal representative has the power to grant an option to purchase real property of the estate for a period within or beyond the period of administration.

**Comment.** Section 10533 restates the last portion of subdivision (a) of former Probate Code Section 591.6 without substantive change. For the comparable provision under supervised administration, see Section 9960.

The personal representative does not have the power described in Section 10533 with respect to granting an option to purchase real property of the estate if the personal representative has limited independent administration authority; such a personal representative may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to grant an option to purchase real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Independent administration authority may not be used to grant an option to the personal representative to purchase property of the estate. See Section 10501.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by this section. See Section 10560. See also Section 10512 (powers with respect to sale of property).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

#### § 10534. Granting exclusive right to sell property

10534. The personal representative has the following powers:

(a) The power to grant an exclusive right to sell property for a period not to exceed 90 days.

(b) The power to grant one or more extensions of an exclusive right to sell property, each extension being for a period not to exceed 90 days.

**Comment.** Subdivision (a) of Section 10534 restates subdivision (1) of former Probate Code Section 591.6 without substantive change. Subdivision (b) is new and makes clear that the exclusive right to sell agreement can be extended, each extension being for a period not to exceed 90 days. This addition conforms the independent administration authority under Section 10534 to the supervised administration provision found in Section 10150(c).

Concerning the exercise of powers described in this article, see Section 10510. See also Section 10512 (powers with respect to sale of property). Advice of proposed action is not required to grant an exclusive right to sell property but is required to extend an exclusive right to sell property. See Section 10567. However, advice of proposed action is required for (1) selling or exchanging real property and for (2) selling or exchanging personal property (with certain exceptions). See Sections 10551 and 10552. See also Section 10584 (contents of advice of proposed action).

The personal representative does not have the power to sell real property using independent administration procedures if the personal representative has limited independent administration authority; such a personal representative may not exercise authority with respect to matters not included within the scope of the authority granted. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

The phrase "where necessary and advantageous to the estate" which was found in subdivision (1) of former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10510 recognizes that the personal representative acts in a fiduciary capacity in exercising the authority under this part. See also Sections 10500 (introductory clause). The personal representative is required to exercise the power granted under this article to the extent that ordinary care and diligence requires that the power be exercised and may not exercise the power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600(b). As to the effect of court authorization or approval, see Section 9612. See also Section 10589 (review of action taken on motion of person who failed to object to action where there is clear and convincing proof that the personal representative violated an applicable fiduciary duty in taking the action).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Property § 62

§ 10535. Transferring to person given option to purchase in will

10535. The personal representative has the power to transfer or convey to a person given an option to purchase real or personal property in the will upon compliance with the terms and conditions stated in the will.

**Comment.** Section 10535 is a new provision, but the power to transfer to a person given an option in the will probably was embraced within the power to "convey" in former Probate Code Section 591.6(a). For the comparable provision under supervised administration, see Section 9980.

The personal representative has the specific power granted by Section 10535 even though the personal representative does not have general independent administration authority to sell real property of the estate. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by this section. See Section 10565.

CROSS-REFERENCES

Definitions

Person § 56  
Personal representative § 58  
Real property § 68  
Will § 88

§ 10536. Completing contract of decedent to convey or transfer property

10536. The personal representative has the power to transfer or convey real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

**Comment.** Section 10536 is a new provision, but the power to transfer to complete a contract made by the decedent was embraced within the power to "convey" in former Probate Code Section 591.6(a), since former Probate Code Section 591.3 required advice of proposed action where the proposed action was "[c]ompleting a contract entered into by the decedent to convey real or personal property." Accordingly, Section 10536 is consistent with prior law and merely makes specific a power that was implied under former law. For the comparable provision under supervised administration, see Section 9860.

The personal representative has the specific power granted by Section 10536 even though the personal representative does not have general independent administration authority to sell real property of the estate. See Sections 10501(e) (personal representative granted

only limited independent administration authority does not have power to sell real property using independent administration procedure), 10510 (introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by Section 10536. See Section 10561.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58  
Property § 62  
Real property § 68

#### § 10537. Determining claims to property claimed to belong to decedent or other person

10537. The personal representative has the following powers:

(a) The power to determine a third-party claim to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) The power to determine the decedent's claim to real or personal property title to or possession of which is held by another.

**Comment.** Section 10537 is a new provision that merely makes specific a power that was implied under former law. Under former Probate Code Section 591.3, advice of proposed action was required where the proposed action was "[d]etermining 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." For the comparable provision under supervised administration, see Section 9860.

Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by this section. See Section 10556.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58  
Property § 62  
Real property § 68

#### § 10538. Paying family allowance

10538. The personal representative has the power to pay a reasonable family allowance.

**Comment.** Section 10538 restates subdivision (m) of former Probate Code Section 591.6 without substantive change. Concerning the exercise

of powers described in this article, see Section 10510. Although advice of proposed action is required for the first payment of a family allowance, the personal representative can continue to make the payment (without any increase) without giving advice of proposed action, except that another advice of proposed action is required if the family allowance is to be continued for a period commencing 12 months after the death of the decedent. See Section 10566. For a more detailed discussion, see the Comment to Section 10566. For provisions relating to payment of the family allowance, see Sections 6540-6545.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### § 10539. Paying taxes, assessments, and other expenses

10539. The personal representative has the power to pay taxes, assessments, and other expenses incurred in the collection, care, and administration of the estate.

**Comment.** Section 10539 restates subdivision (k) of former Probate Code Section 591.6 without substantive change. For provisions relating to payment of debts, expenses, and charges, see Sections 950-980.

Concerning the exercise of powers described in this article, see Section 10510. Unless some special provision of Article 1 (commencing with Section 10550) of Chapter 4 is applicable, advice of proposed action is not required to exercise the power granted by this section. But see Section 10501 (notwithstanding grant of independent administration authority, personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees)

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

#### § 10540. Making a disclaimer

10540. The personal representative has the power to make a disclaimer.

**Comment.** Section 10540 restates subdivision (n) of former Probate Code Section 591.6 without substantive change. Concerning the exercise of powers described in this article, see Section 10510. Advice of proposed action is required to exercise the power granted by this section. See Section 10568. For the provisions relating to disclaimers, see Division 2.5 (commencing with Section 260).

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

## CHAPTER 4. ADVICE OF PROPOSED ACTION

### Article 1. Actions Requiring Advice of Proposed Action

#### § 10550. Article describes actions requiring advice of proposed action

10550. The actions requiring advice of proposed action are all of those described in this article.

**Comment.** Section 10550 restates the introductory clause of subdivision (b) of former Probate Code Section 591.3 without substantive change.

#### § 10551. Selling or exchanging real property

10551. Advice of proposed action is required for any of the following:

(a) Selling real property under the power granted by Section 10512.

(b) Exchanging real property under the power granted by Section 10532.

**Comment.** Section 10551 restates subdivision (a)(1) of former Probate Section 591.3 without substantive change. The power to sell real property under independent administration is granted by Section 10512; the power to exchange real property under independent administration is granted by Section 10532. For a general provision concerning powers with respect to sale of property under independent administration, see Section 10512.

Section 10551 applies only where the sale is made under the power granted by Section 10512 or the exchange is made under the power granted by Section 10532. Accordingly, Section 10551 does not apply where the sale or exchange is made pursuant to another specific power. However, advice of proposed action is required for granting an option to purchase real property (Section 10560), completing a contract by decedent to convey property (Section 10561), conveying real property to a person given an option to purchase the property in the will (Section 10565), or extending an exclusive right to sell property (Section 10567). See also Section 10554(b) (advice of proposed action required for sale of decedent's unincorporated business).

A personal representative who has been granted only limited independent administration authority may not sell or exchange real property using the independent administration procedure. See Section 10501(e) (limited authority excludes power to sell or exchange real property using independent administration procedure). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority). See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority). See also the Comment to Section 10510.

## CROSS-REFERENCES

Advice of proposed action required

Completing contract by decedent to convey property § 10561

Conveying property to person given option to purchase in will § 10565

Extending exclusive right to sell § 10567

Granting option to purchase § 10560

Sale of decedent's unincorporated business § 10554(b)

Definitions

Real property § 68

### § 10552. Selling or exchanging personal property

10552. (a) Except as provided in subdivision (b), advice of proposed action is required for selling or exchanging personal property of the estate.

(b) Advice of proposed action is not required for the sale or exchange any of the following:

(1) A security sold on an established stock or bond exchange through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(2) A security designated as a national market system security on an interdealer quotation system, or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(3) Personal property referred to in Section 10202 or 10259 when sold for cash.

(4) A security described in Section 10200 surrendered for redemption or conversion.

**Comment** Section 10552 supersedes subdivision (b)(3) of former Probate Code Section 591.3. The general power to sell personal property under independent administration is granted by Section 10512; the general power to exchange personal property under independent administration is granted by Section 10532. For a general provision concerning the power to sell property under independent administration, see Section 10512. See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority). See also the Comment to Section 10510.

Subdivision (a) of Section 10552 continues the general requirement of subdivision (b)(3) of former Probate Code Section 591.3 that advice of proposed action be given for the sale or exchange of personal property. Exceptions to this requirement are set forth in subdivision (b). See also Section 10554(b) (advice of proposed action required for sale of decedent's unincorporated business).

Paragraph (1) of subdivision (b) of Section 10552 restates without substantive change an exception found in subdivision (b)(3) of former Probate Code Section 591.3, except that language is added to paragraph (1) to make clear that the security must be sold in the regular course of business by the broker-dealer. For the comparable provision relating to supervised administration, see Section 10200.

Paragraph (2) of subdivision (b) of Section 10552, which authorizes the sale of certain over-the-counter stocks, is new. No notice of sale is required, nor is court confirmation required, for the sale of these over-the-counter stocks under supervised administration. See Section 10200. Quotations for these over-the-counter stocks are published daily in the Wall Street Journal and many other daily newspapers. For the comparable provision relating to supervised administration, see Section 10200.

Paragraph (3) of subdivision (b) of Section 10552 supersedes the exception found in subdivision (b)(3) of former Probate Code Section 591.3 for assets referred to in former Sections 770 and 771.5 when sold for cash. Paragraph (3) of subdivision (b) of Section 10552 expands the exception provided under former Sections 770 and 771.5 to the extent indicated below:

(1) The substance of former Section 770 is continued in new Section 10259 which describes the personal property to which title passes upon sale without the need for court confirmation or approval under supervised administration. However, new Section 10259 includes a provision not found in former Section 770 that recognizes that title to personal property sold at public auction passes without the need for court confirmation or approval upon receipt of the purchase price and delivery of the property or an instrument that transfers title to the property.

(2) Former Section 771.5 is restated without substantive change in new Section 10202. The reference to Section 10202 makes clear that advice of proposed action is not required to sell security subscription or conversion rights pursuant to the power granted by Section 10520. Under supervised administration, security subscription rights may be sold without notice of sale, prior order of court, or subsequent confirmation by the court. See Section 10202. Although the security subscription or conversion right may be sold without giving advice of proposed action, advice of proposed action is required for the exercise of a security subscription or conversion right. See Section 10553(b). See the Comment to Section 10553.

Paragraph (4) of subdivision (b) of Section 10552 is new. This paragraph makes clear that a security described in Section 10200 may be surrendered for redemption or conversion without giving advice of proposed action. Section 10200 governs the surrender of securities for redemption or conversion.

#### CROSS-REFERENCES

##### Advice of proposed action required

Completing contract by decedent to convey property § 10561

Extending exclusive right to sell § 10567

Sale of decedent's unincorporated business § 10554(b)

Transferring property to person given option to purchase in will § 10565

##### Definitions

Property § 62

Security § 70

§ 10553. Investing funds of the estate; exercising security subscription or conversion right

10553. (a) Except as provided in subdivision (c), advice of proposed action is required for investing funds of the estate.

(b) Advice of proposed action is required for exercising security subscription or conversion rights.

(c) Advice of proposed action is not required for any of the following investments:

(1) Deposits and investments described in Section 9700.

(2) Investments described in Section 9730.

**Comment** Section 10553 supersedes subdivision (b)(8) of former Probate Code Section 591.3. The power to invest money of the estate under independent administration is granted by Sections 10511 (investments any personal representative may make without court supervision), 10514 (certain securities), 10515 (investment in manner provided by will), 10520 (exercising security subscription or conversion rights). See also the Comment to Section 10514.

Subdivision (a) of Section 10553 continues the general rule of subdivision (b)(8) of former Probate Code Section 591.3 that advice of proposed action is required for investing funds of the estate. Subdivision (c) sets out the exceptions to the general rule.

Subdivision (b) makes clear that advice of proposed action is required to exercise a security subscription or conversion right. Exercise of such a right under independent administration is authorized by Section 10520, and the exercise of such a right is treated under Section 10553 the same as other investments of estate funds. Although advice of proposed action is required for the exercise of a security subscription or conversion right, advice of proposed action is not required for sale of a security subscription or conversion right. See Section 10552(b)(3).

Subdivision (c) makes reference to statutory provisions found in the supervised administration provisions. The provisions to which reference is made are provisions that permit investments of the type described in subdivision (b)(8) of former Section 591.3 to be made without prior court authorization. See the Comments to Sections 9700 and 9730.

**Note.** The subcommittee at the October meeting added the requirement that advice of proposed action be given for the exercise of a security subscription or conversion right. No such requirement is found in existing law.

**§ 10554. Continuing operation of decedent's business; selling or incorporating decedent's business**

10554. (a) Advice of proposed action is required for continuing operation for a period of more than six months from the date of appointment of the personal representative of any of the following:

(1) An unincorporated business or venture in which the decedent was engaged at the time of the decedent's death.

(2) An unincorporated business or venture which was wholly or partly owned by the decedent at the time of the decedent's death.

(b) Advice of proposed action is required for the sale or incorporation of a business described in subdivision (a).

**Comment** Section 10554 restates subdivision (b)(6) of former Probate Code Section 591.3 without substantive change. The power to continue the operation of the decedent's business under independent administration is granted by Section 10521. The power to sell the decedent's business under independent administration is granted by Section 10512. The power to incorporate the decedent's business is granted by implication by subdivision (b) of Section 10554.

Although advice of proposed action is not required in order to continue the operation of the decedent's business for the first six months, the personal representative may give advice of proposed action for the continuance of the business during this period if the personal representative so desires. See Section 10580(a). See also the Comment to Section 10521.

**CROSS-REFERENCES**

**Definitions**

Personal representative § 58

**§ 10555. Borrowing; encumbrancing estate property**

10555. Advice of proposed action is required for borrowing money or executing a mortgage or deed of trust or giving other security.

**Comment** Section 10555 continues subdivision (b)(10) of former Probate Code Section 591.3 without substantive change. The power to borrow money or to place, replace, renew, or extend any encumbrance upon any property of the estate under independent administration authority is granted by Section 10523.

The grant of the power to borrow money under Section 10523 is limited if the personal representative has limited independent administration authority; a personal representative who has only limited authority does not have authority to borrow money under independent administration procedures on real property of the estate. See Section 10501. If the personal representative has limited independent administration authority, the personal representative may not use the independent administration procedure with respect to matters not included within the scope of the authority granted. See Sections 10501 (matters requiring court supervision), 10510

(introductory clause). See also Sections 10450(b)(2) and 10452(c) (limited independent administration authority).

**§ 10556. Determining third-party claim or decedent's claim to property held by another**

10556. Advice of proposed action is required for any of the following:

(a) Determining third-party claims to real or personal property if the decedent died in possession of, or holding title to, the property.

(b) Determining decedent's claim to real or personal property title to or possession of which is held by another.

**Comment** Section 10556 restates subdivision (b)(11) of former Probate Code Section 591.3 without substantive change. The power to determine the claims described in Section 10556 under independent administration authority is granted by Section 10537.

CROSS-REFERENCES

Definitions

Property § 62

Real property § 68

**§ 10557. Purchasing annuity granted by will**

10557. Advice of proposed action is required for purchasing from an insurer, admitted to do business in this state, an annuity expressly granted by the will to a devisee named in the will.

**Comment.** Section 10557 is a new provision. The power to purchase an annuity granted by the will under independent administration authority is granted by Section 10516.

CROSS-REFERENCES

Definitions

Devisee § 34

State § 74

Will § 88

**Note.** The subcommittee added the requirement that advice of proposed action be given of the purchase from an insurer of an annuity expressly granted by the will to a devisee named in the will. No such requirement is found in existing law, but existing law has no express provision authorizing the purchase of such an annuity under independent administration authority.

§ 10558. Leasing real property.

10558. Advice of proposed action is required for leasing real property for a term in excess of one year.

**Comment** Section 10558 restates subdivision (b)(4) of former Probate Code Section 591.3 without substantive change. The power to lease property of the estate under independent administration authority is granted by Section 10531.

If the lease gives the lessee the option to extend the lease beyond the one-year term, advice of proposed action is required. Taking the option to extend into account in determining the term of the lease for the purpose of Section 10558 is consistent with the rule governing personal property leases under supervised administration. See the Comment to Section 9940 (lease of personal property for term exceeding one-year).

CROSS-REFERENCES

Definitions

Real property § 68

Note. At the suggestion of the subcommittee, the last paragraph has been added to the Comment to Section 10558.

§ 10559. Entering into contracts other than leases of real property

10559. Advice of proposed action is required for entering into any contract, other than a lease of real property, which by its provisions cannot be terminated by the personal representative within two years and is not to be fully performed within two years.

**Comment.** Section 10559 continues restates (b)(5) of former Probate Code Section 591.3 with two revisions:

(1) The first condition of Section 10559 -- that the contract cannot be terminated by the personal representative within two years -- is a new provision. This provision makes clear that advice of proposed action need not be given if a contract is one that by its terms can be terminated by the personal representative within two years. There is no reason why a contract that can be terminated within two years should not be treated the same as a contract that is to be fully performed within two years.

(2) The word "fully" is added second condition stated in Section 10559 -- that the contract is not to be "fully" performed within two years -- to make clear that the requirement that the contract be performed within two years is satisfied only if the contract is one that will be "fully" performed within two years.

The power to lease personal property of the estate under independent administration authority is granted by Section 10531. The power to make contracts under independent administration authority in connection with the management and control of the estate is included in the power granted by Section 10513. Other specific powers granted in Article 2 (commencing with Section 10510) of Chapter 3 by implication include the power to make a contract where necessary to effectuate the specific power granted in that article. Where a contract is made to

effectuate an independent administration power, advice of proposed action is required if the contract fits the description of Section 10559.

#### CROSS-REFERENCES

##### Definitions

Personal representative § 58

Real property § 68

#### § 10560. Granting option to purchase real property

10560. Advice of proposed action is required for granting an option to purchase real property.

**Comment.** Section 10560 restates subdivision (b)(2) of former Probate Code Section 591.3 without substantive change. The power to grant under independent administration authority an option to purchase real property is granted by Section 10533.

#### CROSS-REFERENCES

##### Definitions

Real property § 68

#### § 10561. Completing contract by decedent to convey or transfer property

10561. Advice of proposed action is required for completing a contract entered into by the decedent to convey or transfer real or personal property.

**Comment.** Section 10561 restates subdivision (b)(9) of former Probate Code Section 591.3 without substantive change. The power to transfer or convey property to complete the decedent's contract under independent administration authority is granted by Section 10536.

#### CROSS-REFERENCES

##### Definitions

Property § 62

Real property § 68

#### § 10562. Exercising restricted option

10562. Advice of proposed action is required for exercising an option right that is an asset of the estate and is nontransferrable except by testate or intestate succession from the decedent.

**Comment.** Section 10562 is a new provision. The power to exercise a restricted option under independent administration authority is granted by Section 10517.

**Note.** The subcommittee added a requirement that advice of proposed action be given for exercising a restricted option. No such

requirement is found in existing law, but there is no express provision in existing law authorizing the exercise of a restricted option using independent administration authority.

§ 10563. Making extraordinary repairs or alterations in property

10563. Advice of proposed action is required for making repairs or alterations in buildings or other property unless the repair is an ordinary repair or the alteration is a minor one.

**Comment.** Section 10563 is new. The power to make ordinary and extraordinary repairs or alterations in building or other property under independent administration authority is granted by Section 10524. The power granted by Section 10524 may be exercised without giving advice of proposed action if the proposed action is an ordinary repair or minor alteration. Section 10563 requires advice of proposed action for extraordinary repairs and alterations that are not minor. Even though the repair is ordinary or the alteration is minor, the personal representative may use the advice of proposed action procedure if the personal representative so desires. See Section 10580(b). If the personal representative is uncertain whether the repair is "extraordinary" or the alteration is "minor," the personal representative would be wise to give advice of proposed action if the circumstances are such that there is a possibility that court will determine that the beneficiaries of the estate should have had notice of the proposed action before it was taken.

CROSS-REFERENCES

Definitions

Property § 62

Real property § 68

Note. The subcommittee added a requirement that advice of proposed action be given for extraordinary repairs and alterations that are not minor. No such requirement is found in existing law, which allows ordinary and extraordinary repairs and alterations without the requirement that advice of proposed action be given.

§ 10564. Accepting deed in lieu of foreclosure or trustee's sale

10564. Advice of proposed action is required for accepting a deed to property which is subject to a mortgage or deed of trust in lieu of foreclosure of the mortgage or sale under the deed of trust.

**Comment.** Section 10564 is new. The power to accept a deed in lieu of foreclosure or trustee's sale under independent administration authority is granted by Section 10529.

CROSS-REFERENCES

Definitions

Property § 62

Note. The subcommittee was strongly of the view that advice of proposed action should be required for accepting a deed in lieu of foreclosure or trustee's sale.

§ 10565. Transferring to person given option to purchase in will

10565. Advice of proposed action is required for transferring or conveying to a person given an option to purchase real or personal property in the will.

Comment. Section 10565 is a new. The power to transfer or convey under independent administration to a person given an option to purchase in the will is granted by Section 10535.

CROSS-REFERENCES

Definitions

Person § 56  
Property § 62  
Real property § 68  
Will § 88

Note. The subcommittee added a requirement that advice of proposed action be given for transfer to a person given an option in the will to purchase property. No such requirement is found in existing law, which would allow such transfer to be made without the requirement that advice of proposed action be given.

§ 10566. Paying or increasing family allowance

10566. Advice of proposed action is required for all of the following:

- (a) Making the first payment of a family allowance.
- (b) Making the first payment of a family allowance for a period commencing 12 months after the death of the decedent.
- (c) Making any increase in the amount of the payment of a family allowance.

Comment. Section 10566 restates subdivision (b)(7) of former Probate Code Section 591.3 without substantive change. The power to pay a reasonable family allowance under independent administration authority is granted by Section 10538.

Although advice of proposed action is required for the first payment of a family allowance, the personal representative can continue to make the payment (without any increase) without giving advice of proposed action, except that another advice of proposed action is required if the family allowance is to be continued for a period commencing 12 months after the death of the decedent. Advice of proposed action also must be given if there is to be an increase in the

amount of the payment of a family allowance. Advice of proposed action also must be given if a family allowance is proposed to be paid to a person who previously has not been receiving a family allowance, even where advice of proposed action previously has been given with reference to the payment of a family allowance to another person.

§ 10567. Extending exclusive right to sell property

10567. Advice of proposed action is required for extending an exclusive right to sell property.

**Comment.** Section 10567 is a new provision. The power to give an exclusive right to sell property, and to extend that right, under independent administration authority is granted by Section 10534.

Although the personal representative may give an exclusive right to sell property for a period not to exceed 90 days without giving advice of proposed action, any extension of that exclusive right to sell (which extension may not be for a period exceeding 90 days) requires advice of proposed action.

Although advice of proposed action is not required in order to give an exclusive right to sell property for the first 90 days, the personal representative may give advice of proposed action for the granting of the first exclusive right to sell contract if the personal representative so desires. See Section 10580(a).

CROSS-REFERENCES

Definitions

Property § 62

Note. The subcommittee added the requirement that advice of proposed action be given for the extension of an exclusive right to sell agreement. The existing law makes no provision for an extension, but does not require advice of proposed action for the granting of an exclusive right to sell agreement.

§ 10568. Making a disclaimer

10568. Advice of proposed action is required for making a disclaimer.

**Comment.** Section 10568 is a new provision; advice of proposed action was not required for making a disclaimer under prior law. The power to make a disclaimer under independent administration is granted by Section 10540. For the provisions relating to disclaimers, see Division 2.5 (commencing with Section 260).

Note. The subcommittee added the requirement that advice of proposed action be given for making a disclaimer. Under existing law, no advice of proposed action is required for making a disclaimer.

## STANTON AND BALLSUN

A LAW CORPORATION

AVCO CENTER, SIXTH FLOOR

10850 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90024-4318

(213) 474-6257

TELEX/FAX (213) 474-1246

ELECTRONIC MAIL VIA  
ABA/NET I.D. # ABA2789PLEASE REFER TO  
FILE NO.KATHRYN A. BALLSUN  
PAUL L. STANTON  
CORNELIA L. HEATHER

October 14, 1986

FEDERAL EXPRESS

James V. Quillinan, Esq.  
444 Castro Street, #900  
Mountain View, CA 94041

Re: LRC Memorandum 86-85, IAEA

Dear Jim:

On October 9, 1986, Team 4, (Richard Polse, Harley Spitler, William Hoisington, Janet Wright and I) discussed LRC Memorandum 86-85. Unfortunately, Team 4 only had a few days in which to review Memorandum 86-85. However, we wish the Commission to know that we agreed with the recommended changes, amendments and deletions, except as set forth in this letter. Further, the issues which Team 4 discussed were presented to the Executive Committee of the State Bar Probate, Trust and Estate Planning Section during its October 10, 1986 meeting. Therefore, the following discussion reflects the comments of the entire Executive Committee. Subject to the limitation of insufficient time, the comments are:

1. Proposed comment to Section 10500 (regarding subdivision (b) of that section). We believe that the proposed comment contains an error in that the comment seems to require notice in situations where it otherwise would not be required. The proposed comment should clearly state that if a personal representative obtains court supervision of a real property sale, then a notice of sale does not have to be given unless such notice otherwise would have been required. In other words, as a consequence of acting under the Independent Administration of Estates Act, additional notice should not be required.

2. Section 10502: Exclusive Right to Sell (Specific Independent Administration Powers).

- A. Team 4 and the Executive Committee believe that the personal representative should be able to grant an exclusive right to sell for a period not to exceed one year.
- B. The staff recommended that an advice of proposed action be given for each renewal of an exclusive right to sell. Although the Executive Committee was not unanimous, the majority felt that such an advice of proposed action should not be required each time an exclusive right to sell was renewed unless such notice was required initially; the majority believed that such initial notice should not be required.

4. Section 10554: Waiver of Advice of Proposed Action; Creation of Statutory Waiver of Advice Form.

Team 4 and the Executive Committee believe that the revocation of a waiver of an advice of proposed action should be in writing.

5. Section 10552; Notice to Trust Beneficiaries Where Personal Representative Is the Trustee.

Team 4 is concerned about the the persons to whom notice must be given where the personal representative is the trustee. Team 4 intends to pursue this issue, and will submit recommendations in the near future.

6. Section 10560(c): Persons Entitled to Object.

Section 10560(c) states that "the court may review the action taken upon motion of any interested person, including a creditor of the estate...." Team 4 and the Executive Committee suggest deletion of the words "including a creditor of the estate." A creditor has sufficient protection under the Code, and the words in question will create confusion respecting proper notice and procedures with creditors.

James V. Quillan, Esq.  
October 14, 1986  
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If Team 4 may be of further assistance, please do not hesitate to contact us.

Thank you for your consideration.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN  
A Member of  
STANTON and BALLSUN  
A Law Corporation  
LTR-3:24

KAB:ldf

cc: Richard Polse, Esq.  
Harley Spitler, Esq.  
Janet Wright, Esq.  
Clare Springs, Esq.  
William Hoisington, Esq.  
Lloyd Homer, Esq.  
Chuck Collier, Esq.  
James Willett, Esq.  
Irv Goldring, Esq.  
Jim Devine, Esq.  
Jim Opel, Esq.  
William V. Schmidt, Esq.

ESTATE PLANNING, TRUST AND  
PROBATE LAW SECTION  
THE STATE BAR OF CALIFORNIA



555 FRANKLIN STREET  
SAN FRANCISCO, CA 94102-4498  
(415) 561-8200

## Executive Committee

KATHRYN A. BALLSUN, *Los Angeles*  
D. KEITH BILTER, *San Francisco*  
HERMIONE K. BROWN, *Los Angeles*  
LLOYD W. HOMER, *Camposol*  
KENNETH M. KLUG, *Fresno*  
LEONARD W. POLLARD II, *San Diego*  
JAMES V. QUILLINAN, *Mountain View*  
ROBERT A. SCHLESINGER, *Farmington*  
WILLIAM V. SCHMIDT, *Costa Mesa*  
CLARE H. SPRINGS, *San Francisco*  
ANN E. STODDEN, *Los Angeles*  
JAMES A. WILLETT, *Sacramento*  
JANET L. WRIGHT, *Davis*  
DIANE C. YU, *Oakland*

P.O. Box 1461  
Fresno, CA 93716  
(209) 442-0600

October 9, 1986

Mr. James V. Quillinan  
444 Castro Street  
Mountain View, CA 94041

Re: LRC Memo 86-89 (Estate Management)

Dear Jim:

Team 2 (Rogers, Goodwin, Plageman, Fiore and Klug) has the following comments on Memo 86-89. Jay MacMahon did not participate in our conference call.

1. Section 9612. This section parallels Section 7353 set forth within Memo 86-91. We have the same comments as we made with respect to Section 7353. In addition, we see no reason why the section needs to be repeated in the Court Authorization provisions. We recommend that there be one such provision dealing with all orders, whether they are orders authorizing a certain activity or approving or confirming the activity.

2. Section 9653. The comment states that Subdivision (a) is nonsubstantive. We believe that the comment is wrong: Subdivision (a) as written constitutes a very substantive change. This section deals with a very broad issue, to wit: to what extent may a decedent transfer properties so that the properties are immune from claims of his creditors. This is a very broad issue, and affects not only property gifted by the decedent during his lifetime, but Totten trusts, P.O.D. accounts, life insurance, joint tenancies, living trusts, and I.R.A. and pension beneficiary designations. I will first discuss the major policy issues and then discuss the technical aspects of this draft statute.

Subdivision (a)(1) provides a means for a personal representative to recover certain property if the decedent

Chair  
JAMES A. WILLETT, *Sacramento*  
Vice-Chair  
LLOYD W. HOMER, *Campbell*

Advisors  
THEODORE J. CRANSTON, *La Jolla*  
JAMES D. DEVINE, *Monterey*  
K. BRUCE FRIEDMAN, *San Francisco*  
IRWIN D. GOLDRING, *Beverly Hills*  
JAMES R. GOODWIN, *San Diego*  
JOHN L. McDONNELL, Jr., *Oakland*  
JAMES C. OPEL, *Los Angeles*  
WILLIAM H. PLAGEMAN, Jr., *Oakland*  
JAMES F. ROGERS, *Los Angeles*  
HARLEY J. SPITLER, *San Francisco*  
H. NEAL WELLS III, *Costa Mesa*

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made a conveyance of the property, or any right or any interest in the property, that is fraudulent as to creditors under the California Uniform Fraudulent Conveyance Act. It is not clear to us that a transfer which takes effect at death constitutes a fraudulent conveyance under the Uniform Act. We see no reason why someone should be able to avoid claims of creditors by making a transfer which takes effect at death where he would be unable to avoid those claims if he had lived.

It appears that the key issue is the effect of the actual transfer on creditors. For example, if a mother names her daughter as a beneficiary of a Totten trust, then there has been no completed transfer at the time the beneficiary designation has been made. The transfer takes place when the mother dies. If that transfer renders the mother's estate insolvent, the estate should be able to recover the Totten trust account for the benefit of creditors. It is not clear that the Uniform Act applies in that case. Another good example: Suppose the decedent transfers his entire estate to a living trust, reserving to himself the right to receive income during his lifetime, and leaving the remainder of the trust to his children. When is the transfer made, on creation of the trust or on death? If the trust is revocable, we believe the transfer takes place on the settlor's death. Because he reserved all rights with respect to the trust and those rights terminated on his death (i.e., were transferred to the remaindermen), the personal representative of the estate should be able to recover the trust assets if necessary for the benefit of creditors. Section 9653 should expressly provide for this result.

If the trust were irrevocable, the question is much more difficult. In reserving a life estate, the decedent reserved something of actuarial value. If that actuarial value exceeded his liabilities at the time the trust was established, then he did not render himself insolvent. The actuarial value of the life estate diminishes with the passage of time. At some point in time the actuarial value of the life estate may be less than liabilities. Does the diminishing actuarial value constitute continuing "transfers" for purposes of this section? Should the creditors be entitled to recover trust assets? What if the decedent had misrepresented to the creditor that he owned the trust assets outright? Should the settlor's fraud after establishing the trust prejudice the vested rights of remaindermen? If the debt to the creditor remains at the time of the settlor/income beneficiary's death, the death "terminates" the income

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interest and leaves the decedent with an insolvent estate. Is the "transfer" of the right to future income a transfer in defraud of creditors?

What about life insurance where the decedent owns and has full control over the life insurance policy during lifetime, and may even be making premium payments on the policy in preference to payments to creditors. On the decedent's death, can the creditors reach the life insurance proceeds? Did the premium payments constitute transfers in defraud of creditors?

It does not appear that these situations are covered by the California Uniform Fraudulent Conveyance Act. Section 9653 should clearly define the rights of creditors and the rights of persons who receive these types of non-probate assets. This involves a major issue of public policy. Although our team recommends that a personal representative be entitled to recover for the benefit of creditors all assets whose transfer takes effect on death, we recognize that such may not be politically possible. Whatever the rule, it should be clearly stated to avoid litigation. Section 9653(a) is a substantive change from present law, but does nothing to clear up the question of creditors' rights.

Subdivision (a)(2) creates even more problems. It sets up a vague standard where, if the decedent made a gift of property "in view of death" the personal representative can recover the property for the benefit of creditors. There does not appear to be any limitations period based on when the gift was made, whether or not the gift, itself, made the decedent's estate insolvent, or whether or not there was any intent to defraud creditors. Specifically, every estate planning gift is made "in view" of death (as opposed to the old I.R.C. standard of contemplation of death). Every time a husband and wife place property in joint tenancy in order to avoid probate, the joint tenancy is created "in view of death." We recommend deleting Subdivision (a)(2) and rephrasing Subdivision (a)(1) to allow recovery of all property the transfer of which takes effect at death.

Insofar as the technical comments are concerned, Subdivision (a) should be redrafted. It requires the personal representative to "commence and prosecute to final judgment" an action for the recovery of property. Given the economics of litigation and the public policy for settlement of disputes,

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the personal representative should be permitted to enter into a settlement free of a statutory requirement to prosecute to final judgment.

Subdivision (b) allows for the Court to require the creditor to pay a portion of the expenses of suit and attorneys' fees. There are many economic decisions that need to be made at many steps during litigation: Should a deposition be taken? Should attorneys be compensated on an hourly rate, a flat fee, or a contingency fee? Should an appeal be taken? Should the matter be settled? It is unfair to require the creditor to underwrite the cost of litigation where the creditor has no control over the economic decisions relating to how the litigation is handled?

In many cases the personal representative is a friendly adversary to the person from whom recovery of property is sought. The typical decedent will have transferred property by Totten trust, living trust, or beneficiary designation to family members. Typically another family member (or even the same family member) will be the personal representative. One would have to wear rose-colored glasses to believe that one family member will seriously engage in litigation against another family member for the benefit of a creditor. Even where a direct conflict of interest cannot be shown, there are numerous subtleties in litigation which will be adverse to the creditors' interest. We recommend that if the creditor will be required to underwrite any of the litigation expense to recover property, the creditor should be in charge of the litigation. That is, the creditor should be subrogated to the right of the personal representative and authorized to proceed directly to recover property for the benefit of the estate. Any recovered property should be applied first to the creditor's cost of litigation (as approved by the probate court), and any remaining balance should be applied for the benefit of all estate creditors.

Subdivision (d) provides that if the recovered property is sold, the proceeds shall be applied first to the portion of cost and expenses of suit incurred "by the estate" and then to payment of debts. We recommend that the first clause in the third line of Subdivision (d) be redrafted: "that is to be borne by the estate or the creditor pursuant to Subdivision (b) . . ."

3. Section 9735. This provision allows for the Court to authorize the personal representative to buy stock to cover a short sale by the decedent. Subdivision (c)(2)

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provides that no notice of hearing need be given if the maximum purchase price is fixed or when the securities or commodities are to be purchased on an established stock, bond, or commodity exchange. We believe that if the estate is insolvent, notice should be required. If the decedent sold short, the broker is a general creditor of the estate. If the estate is insolvent and the executor buys stock to cover the short sale, the broker is made whole at the expense of other creditors. We are not necessarily dealing with margin accounts, where the brokerage house has security in other account assets. It is possible to sell short by selling stock and failing to deliver the certificate. That sale need not necessarily be handled through a margin account. We believe that if the estate is insolvent, notice of hearing should be given to all creditors whose interest may be affected by the purchase, unless the court dispenses with notice. (Covering a short sale is usually required early in an estate, when solvency cannot be determined. The court, therefore, should have authority to dispense with notice.)

4. Section 9762. We believe that the last sentence of Subdivision (e) should be deleted. This sentence requires that, unless the Court otherwise orders, a copy of the petition and notice of hearing must be given to the surviving partners where the personal representative seeks Court authority to continue as a partner in the decedent's general partnership. Notice to the surviving partners is unnecessary. They probably do not have any standing to appear in the proceeding because they are not interested persons. They are not required to accept the personal representative as a partner unless they consent, or unless the partnership agreement so requires. If the partnership agreement requires them to accept the personal representative as a partner, and if they refuse to do so, the remedy for the personal representative is by a civil action, and not through the Probate Court. We do not believe the Probate Court has jurisdiction over the surviving partners to require them to accept the personal representative as a partner. Its only jurisdiction over the surviving partners is to compel an accounting by the surviving partner. (Note that since the Court does not have jurisdiction over the surviving partners, that jurisdiction cannot be acquired by mere notice. If the intent were to acquire jurisdiction over the partners, that can be obtained only by personal service. Personal service would be an unnecessary expense.) It should be noted that Section 9762 does not make the personal representative a partner. It only authorizes the personal representative to act as a partner.

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The personal representative can become a partner only by consent of the surviving partners and compliance with the partnership laws. Notice of hearing to partners is a useless act.

5. Sections 9782 and 9783. Section 9783 should be incorporated as Subdivision (c) of Section 9782. Both of these sections deal with the notice, and should be incorporated as one provision.

6. Section 9883. Subdivision (b)(1) should be revised to provide as follows: "(1) all interested persons." Under §48 the definition of interested person will depend on the matter involved, and allows for common sense flexibility. If the decedent died testate, and if the Will disposes of the property, it is unnecessary to give notice to "heirs at law" who are not interested in the property. Similarly, if the sale property comprises residue, it is unnecessary to give notice to persons who receive cash legacies if their interest will not be affected by the sale. A typical Will may leave \$100 to the gardener and other family friends, make small cash legacies to grandchildren, and leave the residue of the estate to a spouse or adult children. The only persons interested in the proposed sale are the residuary takers. Notice of the sale should not be given to persons who receive small cash legacies. They will be confused by the notice, will make inquiries regarding the matter and otherwise increase the expense of administration. If the property is subject to a specific devise, only that devisee need be given notice. If the estate is insolvent, creditors should be entitled to notice. Only persons whose interests are affected or who have filed request for special notice should receive notice. The definition of interested person should be utilized.

Subdivision (c) seems to require a two-step procedure. The first step appears to involve obtaining a Court order authorizing the purchase. The second step seems to involve a court confirmation procedure. No purpose is served by requiring two steps. We believe the matter can be satisfactorily handled on a petition for confirmation of sale, with a disclosure in the petition where the sale is to the personal representative. At that time, the Court can determine whether the provisions of Section 9881 and 9882 are satisfied.

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We also believe that even where the personal representative has independent administration authority, court confirmation should be required of any sale to the personal representative.

Very truly yours,

Kenneth M. Klug

LAW OFFICES OF  
LAWLER, FELIX & HALL

JAMBOREE CENTER  
2 PARK PLAZA, SUITE 700  
IRVINE, CALIFORNIA 92714  
TELEPHONE: (714) 553-0394  
TELECOPIER: (714) 553-0425

LOS ANGELES OFFICE:  
700 SOUTH FLOWER STREET  
LOS ANGELES, CALIFORNIA 90017  
(213) 629-9300

OSCAR LAWLER  
1896-1966  
MAX FELIX  
1922-1954  
JOHN M. HALL  
1916-1973

H. NEAL WELLS III  
PARTNER

October 16, 1986

James V. Quillinan, Esq.  
444 Castro Street  
Suite 900  
Mountain View, CA 94041

Re: California Law Revision Commission  
Recommendation Relating to Estate  
Management Sections 9600-9889

Dear Jim:

Hermione Brown had an opportunity to read the first half of the above Recommendation and discussed her comments with Team 3. The comments, to the extent not discussed at our Executive Committee meeting last Friday are as follows:

§9631--Liability of joint personal representative for breach of duty by another personal representative:

Team 3 is concerned about the impact of this Section in instances where there is a professional corporate co-fiduciary which for corporate regulatory purposes must keep all books and records, hold all estate assets, and may not communicate frequently with the individual co-personal representative. Is the co-individual personal representative who acquiesces in the arrangement subjecting himself or herself to liability for improperly delegating the administration of the estate to the other personal representative under subsection (b)(2) or negligent under subsection (b)(4)?

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Perhaps the only protection of the individual co-personal representative in the event of improper administration by the corporate personal representative is a cause of action against the corporate representative for indemnity. Has the staff or Teams 2 or 4 considered the problem?

§9732--Investment of money as provided in Will:

Have Teams 2 or 4 addressed the unique notice requirements of this section? Are they needed?

Section 9762(c)--Personal representative continuing as partner in decedent's general partnership:

If there is a written partnership agreement which authorizes the personal representative to be substituted in the place of the deceased partner, would subdivision (c) nevertheless require written approval of all of the surviving partners before the substitution may occur? Is the written approval embodied in the partnership agreement sufficient to satisfy this subdivision?

§9782--Notice of proposed disposition or abandonment:

Is the reference in subdivision (a) to Section 9870 supposed to be to Section 9780?

§9802--Petition:

It would be preferable administratively to permit the written consent of the surviving spouse to be filed at any time prior to the hearing rather than having it filed concurrently with the petition. The requirement of a concurrent filing is

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but a trap for the unwary which may cause unnecessary continuances or refilings.

§9836--Court having authority to give authorization:

Team 3 prefers to retain existing law. The filings of petitions with 2 courts would entail an unnecessary duplication of effort and expense. Moreover, it is not advisable to have 2 courts second guessing or in competition with each other at the trial level.

Respectfully submitted,



cc: Valerie Merrit  
Charles G. Schulz  
Leonard Pollard II  
Anne K. Hilker  
John A. Gromala  
Charles A. Collier, Jr.  
D. Keith Bilter  
Irwin D. Goldring  
James C. Opel  
James D. Devine  
Lloyd Homer  
Hermione Brown

LAW OFFICES OF  
LAWLER, FELIX & HALL

JAMBOREE CENTER  
2 PARK PLAZA, SUITE 700  
IRVINE, CALIFORNIA 92714  
TELEPHONE: (714) 553-0394  
TELECOPIER: (714) 553-0425

LOS ANGELES OFFICE:  
700 SOUTH FLOWER STREET  
LOS ANGELES, CALIFORNIA 90017  
(213) 629-9300

OSCAR LAWLER  
1896-1956  
MAX FELIX  
1922-1954  
JOHN M. HALL  
1916-1973

H. NEAL WELLS III  
PARTNER

October 16, 1986

James V. Quillinan, Esq.  
444 Castro Street  
Suite 900  
Mountain View, CA 94041

Re: California Law Revision Commission Recommendation  
Relating to Estate Management Sections 9900-End

Dear Jim:

Team 3 has reviewed the referenced portion of the Estate Management Recommendation. Our comments are as follows.

Section 9921--Petition: The petition to obtain an order authorizing the exchange of property should contain a description of the property and the terms and conditions of the proposed exchange in much the same way as a petition with respect to the granting of an option with respect to the property. Accordingly, Team 3 suggests that Section 9921 be drafted parallel to Section 9961.

Section 9941--Court Authorization for Lease: Team 3 suggests that this section be revised as follows:

"9941. The personal representative may lease real property on behalf of the estate after authorization by order of court obtained under this chapter upon a showing that the proposed lease is to the advantage of the estate."

This is to clarify that the lease is "on behalf" of the estate, rather than from the estate to the personal representative.

Section 9945--Hearing and Order: Team 3 suggests that the first sentence of subparagraph (b) be revised to read as follows:

"(b) If the court is satisfied that it will be to the advantage of the estate, and if the lease is for more than 10 years, its benefit to interested persons, the court shall make an order authorizing the personal representative to make the lease to the person and on the terms and conditions stated in the order."

This is to make the section consistent with paragraph 3(b) of Section 9943.

Section 9948--Effectiveness of Lease: Team 3 concurs in the approach taken by the staff in its comment. However, if paragraph (c) is desirable for leases, might it not be also desirable as a general section applying to sales, exchanges and options?

Section 9962--Minimum Purchase Price: Team 3 concurs that the appraisal be as of a date within one year prior to the filing of the petition respecting the option. However, as in the case of sales (see Section 10309), there is no need for the appraisal to have been made "prior to the filing of the petition."

All that is needed is that the valuation date used in the appraisal be within one year prior to the date of the sale (see Section 10309(2)). This permits the appraisal to be made or completed after the petition is filed but before it is heard.

Section 9965--Option Expires Unless Notice of Exercise Recorded: The comment to this section may be expanded in order to call attention to the six-month recording period set forth in the Civil Code.

Section 9981--Filing of Petition: A Will containing an option would usually specify the time in which the option must be exercised, rather than the time within which a petition with respect to the exercise of the option must be filed. Accordingly, subsection (a) might be amended to require the personal representative to file the petition within 30 days after the exercise of the option instead of "within any time limits provided in the will." If the personal representative fails to file the petition within 30 days, then the purchaser may do so. This would make Section 9981 consistent with Section 10308(a) and (b).

Section 9981(c) specifies the time within which an option must be exercised. This provision would fit better in Section 9980, which deals with the exercise of options, rather than in Section 9981, which deals with petitions after the option is exercised.

Section 10165(c)(3): Team 3 concurs in the staff recommendation set forth in the Fourth Supplement to Memorandum 86-89. The exclusive listing broker who performs services pursuant to an exclusive listing expends a great deal of time and money in marketing the property and in following up with other brokers who show the property to encourage and assist them in consummating the sale. These services would not be adequately performed if the listing broker did not have reasonable assurances of being awarded a percentage of the sales commission. Moreover, listing brokers are not as apt to cooperate fully with other brokers if the net result is the slitting of the listing broker's throat by an award of the lion's share of the selling commission to the broker who procures the bid. Please retain Section 10165(c)(3) as drafted.

Section 10200--Sale or Surrender for Redemption or Conversion of Securities: Team 3 concurs with the staff notes and recommendations appearing at the end of this section.

Section 10203--Decedent's Leasehold Interest: Team 3 concurs in the drafting note of the staff appearing at the end of this section.

Section 10206--Decedent's Contract Right to Purchase Real Property: Team 3 concurs with the staff note at the end of this section. However, we believe the reference in the first line should be to subdivision (b) rather than to subdivision (c).

Section 10257--Sale for Cash or Credit: The words "same tenancy" appearing in the last line of the section are ambiguous. Team 3 assumes that they refer to tenancy terms (e.g., term of years, life estate, or remainder) rather than manner of holding (e.g., tenancy in common, community property or joint tenancy). Is our assumption correct?

Section 10302--Shortening Time of Notice of Sale: Team 3 concurs with the staff recommendation that calendar days, rather than court days, be utilized for notice purposes.

Introductory Notes: Team 3 concurs with the first paragraph of the introduction (pink sheet, page 2).

As Team 3 has not read Sections 9600-9889, we do not know whether this was achieved by a cataloging of powers requiring court approval (e.g., IAEA) or a general section stating that unless court approval is required, a personal representative may act without it.

Team 3 does not concur with the elimination of the ability of a personal representative to act for an estate while a co-personal representative is absent from the state. The purpose of existing law is to enable the personal representative who is present to be the sole signatory of petitions and thereby expedite the business of the estate, not to preclude the absent personal representative from participation in administrative decisions. If there is concern that the section is being abused, it may be

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possible to require the personal representative to insert an allegation in the petition that the absent personal representative has been consulted and concurs in the action being taken by the personal representative who is present. It would be a shame to lose the flexibility of being able to conduct estate business when a co-personal representative is not available to readily sign documents (e.g., such as during vacation periods) just because it is possible that fueding co-personal representatives may misuse the section in isolated instances.

Team 3 concurs with the proposed legislation concerning the rights of the personal representative to purchase estate property if a written consent is signed by all the decedent's heirs, devisees, etc. We assume that such signatures need be obtained only from the heirs and devisees who would be affected by the sale. Is this correct? Should there be like provisions for leases?

Team 3 notes there are still corrections which the staff wishes to make to the recommendation. We are anxious to commence our line-by-line technical review but would prefer to have the next revision in hand before doing so. Do existing timetables permit this delay?

Respectfully submitted,



HNW:svl

James V. Quillinan, Esq.  
October 16, 1986  
Page 7.

cc: Valerie Merrit  
Charles G. Schulz  
Leonard W. Pollard II  
Anne K. Hilker  
John A. Gromala  
Charles A. Collier, Jr.  
D. Keith Bilter  
Irwin D. Goldring  
James C. Opel  
James D. Devine  
Lloyd W. Homer  
Hermione Brown

jd113  
11/13/86

CORRECTION TO MINUTES OF OCTOBER 16-17, 1986, MEETING

The Minutes of the October 16-17, 1986, meeting should be corrected to add the material relating to Study L-642 set out below. This material was inadvertently omitted from the Minutes and should be added by a motion made at the November meeting, so that the Minutes will reflect the Commission decisions at the October meeting concerning Study L-642.

STUDY L-642 - TRUSTS (APPLICATION OF TRUST LAW)

The Commission approved the draft of amendments to the Trust Law that were attached to Memorandum 86-87 to be prepared for introduction in the 1987 legislative session, subject to the following revisions:

Probate Code § 82, "Trust" defined

Subdivision (c) of draft Section 82 should be deleted. This provision reads as follows: "For the purposes of Division 9 (commencing with Section 15000) (Trust Law), 'trust' does not include a charitable trust that is not subject to the jurisdiction of the Attorney General." The relation between the Trust Law and the Attorney General's authority over charitable trusts is dealt with in Section 15004 in the Trust Law. Subdivision (c) would have unnecessarily linked charitable trusts governed by the Trust Law to those that are subject to the jurisdiction of the Attorney General.

Subdivision (d) should also be deleted as unnecessary. Subdivision provided a cross-reference to Section 15002.5 (to be renumbered as Section 15003(c)) relating to the application of the Trust Law to an entity or relationship that is excluded from the definition of "trust" in Section 82. A cross-reference should, however, be included in the comment.

Probate Code § 15002.5. Application of division to entity or relationship not included in definition of "trust"

In order to avoid a decimal section number, this provision should be added to some other provision, such as Section 15003 (constructive and resulting trusts and fiduciary relationships not affected), or moved elsewhere.

Probate Code § 16063. Contents of account

Section 16063, providing the contents of a trustee's account, should be revised, in part, as follows:

16063. An account furnished pursuant to Section 16062 shall contain the following information:

. . . .

(b) A statement of the assets and liabilities of the trust as of the end of the last complete fiscal year of the trust or ~~since the last account~~ *as of the end of the period covered by the account.*