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12/30/85

First Supplement to Memorandum 86-1

Subject: 1986 Legislative Program (Probate Cleanup Revisions)

Technical revisions are needed to two sections of the Probate Code. The staff proposes to make these in the Commission's 1986 probate bill.

Definition of "Account in an Insured Savings and Loan Association"

A technical revision is needed in the definition of "account in an insured savings and loan association" in Section 1406 of the Probate Code (guardianship-conservatorship law) to conform the terminology to the 1983 Savings Association Law (Fin. Code §§ 5000-9001). The proposed revision is set out in Exhibit 1 to this Memorandum and is similar to the Commission-sponsored revision to Probate Code Section 771 made last session.

The proposed revision has been reviewed and approved by the sponsor of the 1983 Savings Association Law, Mr. Dave Milton of the California League of Savings Institutions. The staff has asked Legislative Counsel to prepare the proposed revision for inclusion in the Commission's 1986 probate bill. Does the Commission approve the proposed revision?

Obsolete Reference to Repealed Section

Probate Code Section 584.3 contains an obsolete reference to a section repealed in 1982 by a Commission-sponsored bill (marketable title). A conforming revision to Section 584.3 should have been made in 1982. The amendment set out in Exhibit 2 would correct this oversight. Does the Commission approve this revision for inclusion in our 1986 probate bill?

Respectfully submitted,

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Staff Counsel

Exhibit 1

Probate Code § 1406 (repealed).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

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 Section 1406 of the Probate Code is repealed.

“Account in an insured savings and loan association” means any of the following:

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

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

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

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

SEC. _____. Section 1406 is added to the Probate Code, to read:

1406. (a) “Account in an insured savings and loan association” means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an “insured institution,” as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724 et seq.).

(b) As used in this section:

(1) “Federal association” has the same meaning as defined in subdivision (b) of Section 5102 of the Financial Code.

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

(3) “Savings account” has the same meaning as defined in Section 5116 of the Financial Code.

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

Comment. Section 1406 is repealed and reenacted to conform to the Financial Code provisions as revised by Chapter 1091 of the Statutes of 1983.

Exhibit 2

Probate Code § 584.3 (technical amendment). Granting option to purchase real property

SEC. _____. Section 584.3 of the Probate Code is amended to read:

584.3. An executor or administrator shall have power, with approval of the court which ordered appointment of such executor or administrator, to grant an option to purchase real property of the estate for a period within or beyond the administration of the estate.

(a) To obtain such approval, the executor or administrator shall file a verified petition with the clerk describing the subject real property, stating the terms and conditions of the proposed option, and showing the advantage to the estate in giving such option.

(b) The purchase price of the real property subject to the option must be at least 90 percent of the appraised value of such real property, and such appraisal must have been made by the referee within 90 days prior to the date of filing the petition.

(c) The clerk shall set the petition for hearing by the court and give notice thereof in the manner provided in Section 1200. The executor or administrator shall also cause notice of the hearing to be mailed, postage prepaid, to all heirs, devisees, and legatees of the decedent who are known to the executor or administrator at least 10 days before the hearing, addressed to them, at their respective post office addresses as set forth therein.

(d) Upon the hearing, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objection thereto that may have been filed or presented, and examine into the advantage to the estate in granting the option. If it appears to the court that good reason exists and that it will be to the advantage of the estate for the option to be granted, and it does not appear that a higher offer of a sum exceeding the purchase price of the real property subject to the option, or a better offer with respect to terms of the option, may be obtained, the court shall make an order approving the granting of the option and directing that the executor or administrator give such option, prescribing the terms and

conditions thereof. A higher offer with respect to the purchase price shall be subject to the provisions of Section 785 governing increased bids in sales of real property, and a better offer with respect to the terms of the option shall be one deemed to be materially more advantageous to the estate. A higher offer made either for cash or upon a credit, whether on the same or different credit terms, or a better offer, shall be considered only if the personal representative informs the court in person or by counsel that the offer is acceptable prior to the court's making its order approving the granting of the option.

(e) Where the option granted pursuant to subdivision (d) extends beyond the administration of the estate, the decree of final distribution shall provide that the real property subject to such option be distributed to the distributees subject to the terms and conditions of the option. Further, any option, whether within or beyond the administration of the estate, granted pursuant to subdivision (d) shall be subject to the provisions of ~~Section 1213.5~~ Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

Comment. Section 584.3 is amended to delete the obsolete cross-reference to Section 1213.5 of the Civil Code which has been repealed, and to substitute a reference to the new Civil Code provisions which replaced the repealed section.