

Memorandum 86-83

Subject: Study L-1028 - Independent Administration of Estates

BACKGROUND

At the October meeting, a subcommittee of the Commission considered the comments received on the Tentative Recommendation Relating to Independent Administration of Estates.

The subcommittee made a number of policy decisions, approved many technical revisions in the Tentative Recommendation, and reserved several policy decisions for the November meeting when a quorum will be present. The staff has redrafted the proposed legislation contained in the Tentative Recommendation to incorporate the changes made by the subcommittee and the redrafted statute is attached.

In this memorandum, the staff highlights the significant policy decisions made by the subcommittee and identifies the policy decisions deferred until the November meeting. We do not note, however, the revisions in the proposed legislation that were suggested by interested persons and organizations but were not adopted by the subcommittee at the October meeting.

At the November meeting, the staff recommends that the Commission review the attached statute draft, make any changes the Commission believes are needed, and approve the proposed legislation for printing and submission to the Legislature in 1987. If the Commission can meet this objective, the staff will revise the preliminary portion of the Recommendation and the submit preliminary portion to the Commission at the December meeting for approval for printing.

MAJOR POLICY DECISIONS MADE BY SUBCOMMITTEE AT OCTOBER MEETING

The following is a summary of the major policy decisions made by the subcommittee at the October meeting.

Further Limitation of "Limited Authority"

The subcommittee decided that a personal representative with only limited independent administration authority should not be 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. For further discussion, see subdivision (d) of Section 10501 of the draft statute and the note that follows that section (pages 11-14 of attached draft statute).

The subcommittee deferred making a decision as to whether there should be a transitional provision to prevent the 1987 legislation from taking away the power that the personal representative now has to borrow money on real property even though the personal representative has only limited authority. The staff was requested to draft a transitional provision for consideration at the November meeting. A staff draft of a transitional provision is set out as Exhibit 1 to this memorandum.

Additional Transactions For Which Independent Administration Authority May Not Be Used

The subcommittee decided to preclude the use of independent administration authority entirely in situations where the personal representative has an actual or possible conflict of interest. The proposed legislation identifies these situations. For further discussion, see Section 10501 and the note which follows that section (pages 11-14 of attached draft statute).

Additional Transactions For Which Advice of Proposed Action Is Required

Under existing law, the personal representative who has independent administration authority has a general power to "convey," but there is no general requirement that advice of proposed action be given for all conveyances. However, in some cases, existing law requires advice of proposed action for a particular type of transaction involving a conveyance (example: completing a contract entered into by the decedent to convey real or personal property).

On recommendation of the staff, the Commission deleted the general power to convey and added to the proposed legislation specific authority for the personal representative to engage under independent administration authority in specific types of transactions that might involve a conveyance. The subcommittee then reviewed each of the specific types of transactions that might involve a conveyance and

determined whether advice of proposed action should be required for the particular transaction.

The subcommittee also reviewed the types of proposed actions the personal representative is authorized to take under independent administration and added, in some cases, a requirement that advice of proposed action be given before taking a particular action.

The subcommittee decided that advice of proposed advice should be given for the following transactions for which there is not now a specific provision requiring that advice of proposed action be given:

(1) Exercising a security subscription or conversion right. Existing law gives the personal representative the power under independent administration to exercise a stock subscription or conversion right. No advice of proposed action is required under existing law.

(2) Purchasing annuity granted by will. This power not now specifically listed in independent administration powers; hence, there is no advice of proposed action requirement in existing law.

(3) Exercising restricted option. This power not now specifically listed in independent administration powers; power probably included under power to manage and control estate under existing law. No advice of proposed action is required under existing law.

(4) Making extraordinary repairs or alterations that are not minor. Existing law gives the personal representative power under independent administration authority to make ordinary and extraordinary repairs and alterations. Advice of proposed action is not required under existing law, which allows both ordinary and extraordinary repairs and alterations without the requirement that advice of proposed action be given.

(5) Accepting a deed in lieu of foreclosure or trustee's sale. This power not specifically listed in existing law, but probably included under power to manage and control estate and power to compromise claims. There is no requirement under existing law that advice of proposed action be given. 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.

(6) Conveying to person given option to purchase in will. This power not specifically listed in independent administration powers, but probably included under power to "convey." There is no requirement under existing law that advice of proposed action be given.

(7) Extending period of exclusive right to sell property. There is no specific provision in existing law authorizing the extension of an exclusive right to sell property; existing provision merely grants authority to grant exclusive right to sell for period of 90 days. There is no requirement under existing law that advice of proposed action be given for granting exclusive right to sell property. The power to extend the exclusive right to sell under independent administration authority is unclear under existing law. Hence, there is no specific provision requiring advice of proposed action for extension of an exclusive right to sell.

(8) Making a disclaimer. Existing law gives the personal representative the power to make a disclaimer without giving advice of proposed action.

Revocation of Consent or Waiver

The subcommittee determined that a revocation of a consent or waiver must be in writing and must be received by the personal representative in order to be effective. The subcommittee also determined that that statute should permit the revocation to be filed with the court, but whether or not the revocation is filed with the court should not affect its effectiveness.

The subcommittee requested the staff to draft a provision to be reviewed at the November meeting. The staff drafted provision is Section 10584 on pages 50-51 of the attached draft statute.

POLICY ISSUES DEFERRED FOR DECISION UNTIL NOVEMBER MEETING

Effect of Failure to Object to Proposed Action

The major policy issue presented by the Tentative Recommendation that was distributed for comment was presented by the section relating to the effect of failure to object to a proposed action. In the attached staff draft, this is covered by Section 10590 on pages 56-57.

The staff has revised the section set out in the tentative recommendation to adopt the suggestions of Charles Collier which

apparently were approved by the Executive Committee of the Estate Planning, Trust and Probate Law Section. You can determine the changes made in the draft distributed for comment because deleted material is shown in strikeout and new material is shown in italic.

Persons who commented on the Tentative Recommendation sent out for comment expressed considerable concern about the section as set out in 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 set out in the Tentative Recommendation sent out for comment might defeat this objective. We note below the reaction. We have not set out the letters commenting on the Tentative Recommendation (they were attached to the Memorandum considered at the last meeting), but we quote relevant portions of the comments we received.

The San Diego Bar "approves of narrowing the Court's ability to review proposed actions when no one who has received notice of proposed action has filed a timely objection. This change appears to preclude the disgruntled beneficiary who files no objection from coming to the Court and suggesting to the Court that on its own motion the proposed action be examined."

The San Mateo Bar group reached the following consensus:

We believe that the proposed language allowing a person the right to have the court review an action taken by the executor which had not been earlier objected to by the person may be too broad. We believe that while in principle, a "second look" at an executor's actions may be appropriate, it should be limited to situations in which there has been an intentional fraudulent misrepresentation on the original Advice of Proposed Action or a willful nondisclosure of a material fact which, had it been disclosed, would have led the recipient of the Advice to object.

Dennis-Strathmeyer has the same concern as the San Mateo County Bar Association:

Regarding court review despite failure of an heir to object, I am not sure what we gain by requiring "clear and convincing evidence that the personal representative violated an applicable fiduciary duty in taking the action." I think the act should protect the honest executor who sells a \$100,000 house for \$95,000 no matter how convincing the evidence that the house is worth \$100,000. The issue here is not the clarity of the evidence, but the degree of culpability. The latter issue is related to the amount of disclosure in the notice.

Consider the common sort of case where the personal representative is one of the decedent's several children, and the representative sells the \$100,000 house to one of his issue for \$95,000. Obviously court review should be available if the identity of the buyer was not disclosed in the advice of proposed action and/or there was actual knowledge of value of the property which was not disclosed or known to the other heirs. But I am not sure review should be available if the entire family believed the property was worth \$95,000 and everyone consented.

I don't have a specific suggestion for revision of proposed Section 10560, but I am not comfortable with what we have.

Flinn also believes that the Tentative Recommendation does not provide enough protection to the personal representative:

I do not think, however, that the new expansion of rights for one who fails to object to a proposed action is reasonable or necessary. The right exists, always, to make a claim of breach of fiduciary obligation, and this further language can only serve to confuse and lead people to believe that they can still set aside independent administration action, even if they fail to respond to a notice of proposed action. That is simply the opposite of what is intended by the giving of the notice.

The Kern County Bar does not approve of placing on an objecting party the burden of establishing breach of fiduciary duty by "clear and convincing evidence." The Kern County Bar believes that it unclear exactly what the effect of the burden of proof will have. The Kern County Bar states:

Our committee felt that the recommendation that a person who fails to object after receiving an advice of proposed action must show a violation of fiduciary duty by clear and convincing evidence in order to obtain court review of the action places too great a burden on the objecting party. It should be sufficient that the objecting party establishes by a preponderance of the evidence that a breach of fiduciary duty has occurred.

We also felt that the effect of this provision was unclear from the point of view of procedure. It implies that there is a two-step process in which the court first decides whether the objecting party has established by clear and convincing evidence that a violation of fiduciary duty has occurred and, if that is established, then conducts a hearing on the propriety of the action. Presumably, the burden of proof at the hearing on the propriety of the action is preponderance of the evidence, but this is obviously anomalous because the objecting party has already established by clear and convincing evidence that a breach of fiduciary duty has occurred. Some clarification should be made both as to procedure and as to the degree of proof required.

The staff believes that the intent of adding the "clear and convincing evidence" standard is to require that there be clear and convincing proof that the personal representative violated a fiduciary duty. In other words, unless it is clear that the action was improper, the action can not be reviewed. In view of the comment of the Probate and Estate Planning Section of the Kern County Bar Association and the other comments the Commission received on the Tentative Recommendation, the staff believes that the statute should be made more understandable and should better deal with the extent to which the court can review a matter where a person given notice fails to object.

One approach to clarifying the provision would be to adopt the suggestion of the San Mateo Bar Probate Section that court review of an action by the personal representative where the person given notice failed to object be limited to the situations in which there has been an intentional fraudulent misrepresentation on the original Advice of Proposed Action or a willful nondisclosure of a material fact which, had it been disclosed, would have led the recipient of the Advice to object.

Another approach is suggested by Charles Collier and this approach appears to be supported by the Executive Committee of the Estate Planning, Trust and Probate Law Section. Collier expresses great concern about the section as set out in the Tentative Recommendation that was distributed for comment. He is concerned that the section in that form would invite a court review of any independent action whenever the beneficiary is unhappy with the action taken or the result. He has suggested that the section be revised to make the section clearer and more protective of the personal representative. The revised section is set out as Section 10590 in the attached draft statute on pages 56-57. The changes proposed to be made in the provisions included in the Tentative Recommendation sent out for comment are shown by ~~strikeout type~~ (for deleted material) and *italic* (for added material).

The staff believes that the revised section (set out on pages 56-57 of the attached draft) will deal adequately with the concerns expressed by the various persons who commented on the section and at the same time not substantially undercut the finality of an advice of

proposed action. The revised section appears to be supported by the Executive Committee of the Estate Planning, Trust and Probate Law Section and is recommended by the staff.

One significant revision in subdivision (b) of the revised section is the addition of language to require that the advice of proposed action be given as provided in Sections 10550 to 10556, inclusive. This revision makes clear that the advice of proposed action must contain the information required by the Judicial Council form and must be properly delivered or mailed.

Collier would delete subdivision (a) of Section 10590 as unnecessary. However, this subdivision is necessary. The subdivision indicates when the restraining order must be served in order to be considered a proper objection. Perhaps the subdivision should be the last subdivision of the section rather than the first.

Statutory Form For Waiver of Advice of Proposed Action

The statutory form for waiver of advice of proposed action has been revised as determined by the subcommittee and is set out as Section 10600 on pages 58-61 of the revised draft attached to this Memorandum. The revised form should be reviewed by the Commission.

Collier raises one policy issue in connection with the form. A decision on this issue was deferred by the subcommittee until the November meeting. The Collier suggestion is:

Paragraph (3), dealing with a waiver of a right to advice in subparagraph (b) [page 60 of revised draft], refers to various kinds of transactions listed below. That is not meaningful to a party executing the waivers. Perhaps there should be general categories of transactions listed which they could check, such as (a) real property transactions, (b) security transactions, (c) personal property transactions, (d) financial transactions and borrowing of funds, etc.

The staff had anticipated that the attorney for the personal representative would prepare the waiver form and insert in the form the transaction or types of transactions for which waiver is sought; the person executing the waiver would decide only whether or not to waive notice of those transactions. The Commission could, however, list various categories for which a waiver might be sought, as suggested by Mr. Collier, including one "Other _____," so that the form could be completed and used by a person who does not

have the benefit of legal counsel. The staff would prefer to require that the person completing the form write in the kinds of transactions for which advice of proposed action need not be given.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

§ 1407. Limited authority granted prior to July 1, 1988

1407. If the personal representative was granted independent administration authority prior to July 1, 1988, the personal representative may use the independent administration authority on and after July 1, 1988, to borrow money on a loan secured by an encumbrance upon real property, whether or not the independent administration authority includes the authority to sell real property.

Comment. Section 1407 is a transitional provision that preserves the authority granted to a personal representative prior to July 1, 1988, where the personal representative was granted authority that did not include the authority to sell, exchange, or grant an option to purchase real property. Under the law in effect prior to the operative date of this part, such a personal representative had authority to borrow money with the loan secured by an encumbrance upon real property of the estate.

This part adds an additional limitation on the authority of a personal representative whose authority does not include authority to sell, exchange, or grant an option to purchase real property; such a personal representative does not have authority to borrow money with the loan secured by an encumbrance upon real property of the estate. See Section 10403 (defining "limited authority") and the Comment to that section. Section 1407 makes clear that this additional limitation does not apply to a personal representative who was granted independent administration authority prior to July 1, 1988. Such a personal representative may borrow money on or after July 1, 1988, on a loan secured by real property of the estate, notwithstanding that the personal representative does not have authority to sell real property of the estate.

CROSS-REFERENCES

Definitions

Personal representative § 58
Real property § 68

Note. This section assumes that the 1987 legislation will be enacted in 1987 and will become operative on July 1, 1988.

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

§ 10400. Citation of this part

10400. This part shall be known and may be cited as the Independent Administration of Estates Act.

Comment. Section 10400 continues former Probate Code Section 591 without substantive change.

§ 10401. "Court supervision" defined

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

Comment. Section 10401 restates a portion of the second sentence of subdivision (a) of former Probate Code Section 591.2 without substantive change. See also Section 10500(a) (requirements applicable to court confirmation of sales of real property do not apply to sales under independent administration).

Note. At the October meeting, the subcommittee approved a technical change in Section 10401 which has been incorporated into the section.

§ 10402. "Full authority" defined

10402. As used in this part, "full authority" means authority to administer the estate under this part that includes 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.

Comment. Sections 10402 and 10403 are new definitions that recognize the use in practice of the terms "full authority" and

"limited authority" to describe the powers of a personal representative who has obtained independent administration authority. The Judicial Council form uses these terms. See Petition for Probate (Form Approved by the Judicial Council of California DE 111 (Rev. January 1, 1986)).

Subdivision (d) of Section 10402 and subdivision (d) of Section 10403 are consistent with the portion of subdivision (e) of Section 10501 which 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 (d), see Sections 10450(b)(2), 10452(c), and 10501(e).

CROSS-REFERENCES

Definitions

Real property § 68

Note. Section 10402 is a new section approved by the subcommittee at the October meeting. The section is nonsubstantive and aids in the drafting of the new statute.

§ 10403. "Limited authority" defined

10403. 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.

Comment. See the Comment to Section 10402.

CROSS-REFERENCES

Definitions

Real property § 68

Note. Section 10403 is a new section approved by the subcommittee at the October meeting. The section is nonsubstantive and aids in the drafting of the new statute.

§ 10404. This part not applicable if will so provides

10404. The personal representative may not be granted authority to administer the estate under this part if the decedent's will provides that the estate shall not be administered under this part.

Comment. Section 10404 restates the second sentence of subdivision (a) of former Probate Code Section 591.1 without substantive change. For purposes of Section 10404, a provision in the decedent's will that the estate shall not be administered under former Article 2 of Chapter 8 of Division 3 of the Probate Code (former Sections 591 through 591.9, inclusive), or under the Independent Administration of Estates Act, is a provision that the estate shall not be administered under this part. See also Section 10510 (introductory clause) (will may restrict powers exercisable under independent administration authority).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

§ 10405. Special administrator

10405. A special administrator may not be granted authority to administer the estate under this part unless the special administrator is appointed with the powers of a general administrator.

Comment. Section 10405 replaces the third sentence of subdivision (a) of former Probate Code Section 591.1. That sentence provided that the independent administration provisions did not apply to special administrators. Section 10405 permits independent administration authority to be granted to a special administrator if the special administrator is appointed with the powers of a general administrator. See Section 465. This new authority will be useful, for example, in an estate with a lengthy will contest where virtually all of the administration is handled by the special administrator, and the only act which occurs after the final resolution of the will contest is the distribution of the estate assets. In such a case, the special administrator may obtain independent administration authority unless good cause is shown why the authority should not be granted.

An applicant for letters of special administration with powers of a general administrator can obtain independent administration authority only as provided in Sections 10450-10453, inclusive. The applicant must petition for the authority as provided in Section 10450; notice of the hearing must be given in compliance with the requirements of Section 10451; and the provisions of Sections 10452 and 10453 are applicable.

If there is an urgent need for appointment of a special administrator, the petition for independent administration authority can be filed under Chapter 2 (commencing with Section 10450) after the special administrator has been appointed. Using this procedure will permit the special administrator to be appointed without delay and yet permit compliance with the notice of hearing requirements of Section 10451 for the hearing on the petition for independent administration authority.

§ 1406. Application of part

1406. (a) This part applies in all of the following cases:

(1) Where authority to administer the estate is granted under this part.

(2) Where authority to administer the estate was granted under former Sections 591.1 to 591.9, inclusive, of the Probate Code on a petition filed after January 1, 1985.

(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 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 authorized to administer the estate under this part, and the petition is granted.

(b) Except as provided in paragraph (3) of subdivision (a), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act shall continue to administer the estate under the provisions of the Independent Administration of Estates Act that were applicable at the time the petition was granted.

Comment. Section 10406 is a new provision that makes clear that this part applies to a pending proceeding where independent administration authority was granted subsequent to January 1, 1985, under the former Probate Code provisions that governed independent administration authority. Section 10406 also permits a personal representative who was granted independent administration authority prior to January 1, 1985, to exercise the authority granted by this part where a petition is filed under this part requesting such authority and the petition is granted.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. The subcommittee at the October meeting made a technical revision in Section 10406 which has been incorporated into the section.

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

§ 10450. Petition for order granting independent administration authority

10450. (a) To obtain authority to administer the estate under this part, the personal representative shall petition the court for that authority either in the petition for his or her appointment or in a separate petition filed in the estate proceedings.

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

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

(2) Limited authority to administer the estate under this part.

Comment. Subdivision (a) of Section 10450 restates the first sentence of subdivision (a) of former Probate Code Section 591.1 without substantive change.

Subdivision (b) of Section 10450 restates subdivision (b) of former Probate Code Section 591.1 without substantive change except that subdivision (b) of Section 10450 uses the defined terms "full authority" and "limited authority." See Sections 10402 (defining "full authority") and 10403 (defining "limited authority"). Using the defined terms makes the subdivision consistent with the portion of subdivision (e) of Section 10501 which 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 (b), see Sections 10452(c) and 10501(e).

Subdivision (b) of Section 10450 permits the petitioner either (1) to request full authority to administer the estate under this part (this authority permits the personal representative to administer the estate using the full authority that may be granted under this part) or (2) to request limited authority to administer the estate under this part. Limited authority excludes the 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. See Section 10403 (defining "limited authority"). The petitioner might request only limited authority in order to avoid the need for an increased bond to cover the estimated net proceeds of real property transactions (see Section 10453).

The personal representative, despite the grant of independent administration authority, may seek court supervision of the transaction. See Section 10500(b). Hence, for example, even though the personal representative has been granted full authority (independent administration authority that encompasses real property transactions), the personal representative may decide to sell real property under the supervised administration procedures (using the statutory procedure that governs a real property sale when independent administration authority has not been granted). See the Comment to

Section 10500. Likewise, the personal representative may decide to seek court approval or instructions concerning a transaction rather than using independent administration authority because there is a lack of agreement as to the desirability of the transaction among the persons interested in the estate or because some of the heirs or devisees who would receive an advice of proposed action lack the capacity to object to the proposed action (see subdivision (d) of Section 10590) or for some other reason.

Authority to administer the estate under this part may not be granted where the decedent's will provides that the estate shall not be administered under this part. See Section 10404. Likewise, the authority of the personal representative to exercise particular powers under the Independent Administration of Estates Act may be restricted by the decedent's will. See Section 10510 (introductory clause). A special administrator may not be granted independent administration authority unless the special administrator is appointed with the powers of a general administrator. See Section 10405 and the Comment to that section.

CROSS-REFERENCES

Bond, increase in amount where full authority granted § 10453

Definitions

Full authority § 10402

Limited authority § 10403

Personal representative § 58

Real property § 68

Verification of petition § 7203

§ 10451. Notice of hearing

10451. (a) If the authority to administer the estate under this part is requested in the petition for appointment of the personal representative, notice of the hearing on the petition shall be given for the period and in the manner applicable to the petition for appointment.

(b) Where proceedings for the administration of the estate are pending at the time a petition is filed under Section 10450, notice of the hearing on the petition shall be given for the period and in the manner required by Section 1200.5. At least 10 days before the date set for hearing of the petition by the court, the petitioner shall cause notice of the hearing to be mailed to the person named as executor in the will of the decedent if not the petitioner and to all devisees and to all known heirs of the decedent and to all persons who have requested notice as provided in Section 1202.

(c) The notice of hearing of the petition for authority to administer the estate under this part, whether included in the petition for appointment or in a separate petition, shall include the substance of the following statement: "The petition requests authority to administer the estate under the Independent Administration of Estates Act. This authority would permit the personal representative with certain exceptions to act without court supervision that otherwise would be required. The petition will be granted unless good cause is shown why it should not be."

Comment. Subdivision (a) of Section 10451 restates subdivision (c) of former Probate Code Section 591.1 without substantive change.

Subdivision (b) restates subdivision (d) of former Probate Code Section 591.1 with the addition of the requirement that notice of hearing be given to the person named as executor in the will of the decedent if not the petitioner. The reference in former Section 591.1 to Section 1200 is corrected to refer to Section 1200.5.

Subdivision (c) restates subdivision (e) of former Probate Code Section 591.1 with the addition of the last two sentences of the statement which are new.

CROSS-REFERENCES

Clerk to set petition for hearing § 7202

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Proof of giving notice § 7308

Note. The subcommittee made a technical revision in the second sentence of subdivision (b) which is incorporated into the section set out above.

§ 10452. Hearing; order; endorsement on letters

10452. (a) Any interested person may appear and object to the granting of authority to administer the estate under this part by filing at or before the hearing a written statement setting forth the objection.

(b) Unless the court determines that the objecting party has shown good cause why the authority requested in the petition should not be granted, the court shall grant the requested authority.

(c) The letters shall be endorsed to the effect that the letters are issued under this part and, if the authority granted is limited authority, the endorsement shall include a statement that the

§ 10454. Revocation of independent administration authority

10454. (a) Any interested person who objects to continued administration of the estate under this part may file a petition setting forth the basis for revoking the authority of the personal representative to continue administration of the estate under this part.

(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 manner as may be authorized by the court.

(c) If the court determines that good cause has been shown, the court shall make an order revoking the authority of the personal representative to continue administration of the estate under this part.

(d) Upon the making of an order under this section, new letters shall be issued without the endorsement described in subdivision (c) of Section 10452.

Comment. Section 10454 restates former Probate Code Section 591.7 with the addition of the requirement that notice of the hearing be given for the period and in the manner provided in Section 1200.5. This additional service will give notice to persons who may be interested in the petition to revoke the independent administration authority.

CROSS-REFERENCES

Clerk sets petition for hearing § 7202

Definitions

Interested person § 48

Letters § 52

Personal representative § 58

Proof of giving notice § 7308

Verification of petition § 7203

Note. The subcommittee added the first sentence to subdivision (b).

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 10403, 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 (court review of action taken under independent administration).

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, 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 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 10590 (court review of action taken pursuant to independent administration authority).

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 for additional period § 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 for additional period § 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 for an additional period 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 10590 (court review of action taken pursuant to independent administration authority).

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). Advice of proposed action also is required for the sale or incorporation of the decedent's unincorporated business. See Section 10554.

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 10403, 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.

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 10590 (court review of action taken pursuant to independent administration authority).

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 the period of 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; encumbering 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 to the 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.

Article 2. Advice of Proposed Action Procedure

§ 10580. When advice of proposed action required or permitted

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 an 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 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 the personal representative to 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.

Comment. The first sentence of subdivision (a) of Section 10580 restates paragraph (1) of subdivision (a) of former Probate Code Section 591.3 without substantive change.

The second sentence of subdivision (a) is new. This new sentence is merely clarifying and makes no substantive change in prior law. The sentence makes clear that if the personal representative has only limited authority, the mere fact that the power is listed in Article 1 (commencing with Section 10550) gives the personal representative no right or authority to exercise the power using the procedure provided in this chapter. See Section 10403 (limited authority does not include 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). Where the personal representative has only limited authority and does not have the power to take the proposed action under this part because the power to do so is not within the limited authority granted to the personal representative, the personal representative may exercise the power only pursuant to the provisions relating to court supervision, and the provisions of this part have no application to the transaction.

Subdivision (b) of Section 10550 is a new provision that permits a personal representative to use the procedure provided in this article with respect to an action that the personal representative proposes to take even though the action is not one for which advice of proposed action is required. For example, the personal representative may want to proceed under subdivision (b) where the proposed action is the compromise of a claim by or against the estate (see Section 10525). This action is one that ordinarily does not require an advice of proposed action. See the Comment to Section 10525. If the procedure provided by this article is used with respect to the proposed action, the person who fails to object to the proposed action waives the right to have the court later review the action taken. See Section 10590 and the Comment to that Section. See also Section 10588(b) and the Comment to that section. Use of the advice of proposed action procedure avoids the need to petition the court for instructions on the proposed compromise in order to preclude a later challenge to the accounts of the personal representative.

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) and the Comment to Section 10500.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Section 10580 as set out above includes technical revisions made by the subcommittee at the October meeting.

§ 10581. Persons to whom advice of proposed action must be given

10581. Except as provided in Sections 10582 and 10583, advice of proposed action shall be given to all of the following:

(a) Each devisee whose interest in the estate is affected by the proposed action.

(b) Each known heir of the decedent if the estate is an intestate estate.

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

(d) The State of California if any portion of the estate is to escheat to it.

Comment. Section 10581 continues the introductory clause and paragraph (2) of subdivision (a) of former Probate Code Section 591.3 without substantive change except that "known heir" is substituted for "heir" in subdivision (b).

CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Devisee § 34

Heirs § 44

Person § 56

Waiver of right to receive advice of proposed action § 10583

Note. The subcommittee deleted the requirement 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 giving notice in this case is a general problem and should be covered by a general provision in the general notice provisions.

The staff has substituted "known heir" for "heir" in subdivision (b) of Section 10581. This conforms Section 10581 to subdivision (b) of Section 10451. Is this substitution satisfactory to the Commission?

§ 10582. Consent to proposed action

10582. Advice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

Comment. Section 10582 continues subdivision (c) of former Probate Code Section 591.3 without substantive change. Section 10582 provides a method that can be used to avoid the delay that otherwise would result from the requirement that a person given advice of proposed action be allowed a specified period of time -- see Section 10586(b) and (c) and Section 10587 -- within which to object to the proposed action. Concerning revocation of a consent, see Section 10584.

CROSS-REFERENCES

Definitions
Person § 56

§ 10583. Waiver of advice of proposed action

10583. (a) The advice of proposed action need not be given to any person who, in writing, waives the right to the advice of proposed action with respect to the particular proposed action. The waiver may be executed at any time before or after the proposed action is taken. The waiver shall describe the particular proposed action and may waive particular aspects of the advice, such as the delivery, mailing, or time requirements of Section 10586, or the giving of the advice in its entirety for the particular proposed action.

(b) The advice of proposed action need not be given to any person who has executed a Statutory Waiver of Advice of Proposed Action Form that satisfies the requirements of Section 10600 and in that form has made either of the following:

- (1) A general waiver of the right to advice of proposed action.
- (2) A waiver of the right to advice of proposed action of all transactions of a type which includes the particular proposed action.

Comment. Subdivision (a) of Section 10583 restates subdivision (d) of former Probate Code Section 591.3 without substantive change. The subdivision permits waiver of advice of proposed action only with respect to a particular proposed action. A person entitled to advice of proposed action may execute a written waiver under subdivision (a) that would, for example, permit notice of a particular proposed real property transaction to be given to the person by telephone so that the proposed action can be expeditiously completed if the person does not object. In such a case, if the person is agreeable to the sale of the real property, the waiver could be drafted in terms that would permit the personal representative to call the person on the telephone to advise the person of an offer to buy the property and to permit the sale of the property at the price and on the terms offered if the person called is agreeable or at a price and on the terms of a counter-offer that is agreeable to the person called.

Subdivision (b) is new. Under this provision, a person could, for example, execute a statutory waiver in the form prescribed by Section 10600 to waive the right of advice of proposed action with respect to investing funds of the estate and borrowing money without waiving the right to advice of proposed action with respect to sales of real property. Or the person could waive the right to receive advice of proposed action with respect to any and all actions the personal representative might decide to take.

The personal representative is not excused from the obligations imposed by his or her fiduciary duties because a waiver has been executed. See Section 10510 and the Comment to that section. Concerning revocation of a waiver, see Section 10584.

CROSS-REFERENCES

Advice of proposed action, delivery or mailing requirement § 10586

Definitions

Person § 56

Revocation of waiver § 10584

§ 10584. Revocation of consent or waiver

10584. (a) A waiver or consent may be revoked only in writing and is effective only when the writing is received by the personal representative.

(b) A waiver made using the Statutory Waiver of Advice of Proposed Action Form may be revoked by executing a writing revoking the waiver or by signing and dating the "Cancellation of Waiver" portion of the form and then delivering the writing or form to the personal representative. The revocation is effective when the writing revoking the waiver or the form containing the executed cancellation of waiver is received by the personal representative.

(c) A copy of the revocation may be filed with the court, but the effectiveness of the revocation is not dependent upon a copy being filed with the court.

Comment. Section 10584 is a new provision that prescribes the requirements for revocation of a consent or waiver. If the waiver was made using the Statutory Waiver of Advice of Proposed Action Form, the form itself includes a portion that can be executed to revoke ("cancel") the waiver. See Section 10600.

Section 10584 permits a copy of the revocation to be filed with the court. Such a filing may be of some value in proving that the consent or waiver was revoked.

CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Personal representative § 58

Statutory Waiver of Advice of Proposed Action Form § 10600

Waiver of advice of proposed action § 10583

Note. Section 10584 is a new provision. The subcommittee requested the staff to draft this provision (which the subcommittee determined should require a revocation of a consent or waiver to be in writing and to be received by the personal representative before it is effective) for review by the Commission at the November meeting.

§ 10585. Judicial Council form to be used to give advice of proposed action

10585. The most current form prescribed by the Judicial Council for Advice of Proposed Action, properly completed, shall be used to give advice of proposed action.

Comment. Section 10585 supersedes the second, third, and fifth sentences of former Probate Code Section 591.4 and all of former Probate Code Section 591.8. Section 10585 makes no change in existing practice, but the requirement that the Judicial Council form be used and be "properly completed" is substituted in Section 10585 for the duplicative and somewhat incomplete statement of the required contents that appeared in former Section 591.4 and for the statutory form set out in former Section 591.8 which was superseded by the Judicial Council form.

Section 10585 requires that the Judicial Council form must be "properly completed." This means that the advice must contain the information required by the form, including a description of the proposed action in reasonably specific terms, with additional information if the proposed action involves a sale or exchange of real property or an option to purchase real property. See the Judicial Council form.

CROSS-REFERENCES

Time for mailing or delivery § 10586

Note. Section 10585 is a new section suggested by the subcommittee.

§ 10586. Delivery or mailing of advice of proposed action

10586. (a) The advice of proposed action shall be delivered personally to each person required to be given advice of proposed action or be sent by first-class mail to the person at the person's last-known address. If the advice of proposed action is mailed to a

person who resides outside the United States, it shall be sent by air mail.

(b) If the advice of proposed action is delivered personally, it shall be delivered to the person not less than 15 days before the date specified in the advice of proposed action on or after which the proposed action is to be taken.

(c) If the advice of proposed action is sent by mail, it shall be deposited in the mail not less than 20 days before the date specified in the advice of proposed action on or after which the proposed action is to be taken.

Comment. Subdivision (a) of Section 10586 restates the first sentence of former Probate Code Section 591.4 without substantive change. Subdivisions (b) and (c) restate the fourth sentence of former Probate Code Section 591.4 without substantive change.

CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Person § 56

Waiver of advice of proposed action § 10583

§ 10587. Objection to proposed action

10587. A person given advice of proposed action who desires to object to the proposed action may deliver or mail a written objection to the personal representative at the address stated in the advice of proposed action, so that the objection is received before the date specified in the advice of proposed action on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is the later time.

Comment. Section 10587 restates subdivision (a)(2) of former Probate Code Section 591.5 without substantive change, except that Section 10587 makes clear that only a person given advice of proposed action can object in the manner provided in Section 10587. Section 10588, on the other hand, permits a person to obtain a court order restraining the taking of a proposed action without court supervision whether or not the person has been given advice of proposed action.

Section 10587 applies whether the the advice of proposed action is given pursuant to subdivision (a) of Section 10580 (giving of advice mandatory) or under subdivision (b) of that section (giving of advice permissive). See also Section 10590 (effect of failure to object).

CROSS-REFERENCES

Definitions

Person § 56
Personal representative § 58
Effect of objection § 10589

§ 10588. Restraining order

10588. If a proposed action would require court supervision if the personal representative had not been granted authority to administer the estate under this part and a person described in Section 10581 objects to the taking of the proposed action without court supervision, the person may apply to the court having jurisdiction over the proceeding at any time before the proposed action is taken for an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative and without cause being shown for the order. The person who obtained the order may serve it upon the personal representative in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in the manner authorized by the court.

Comment. Section 10588 restates subdivision (a)(1) of former Probate Code Section 591.5 without substantive change.

With respect to a particular action, the person objecting to the action may:

(1) Mail or deliver a written objection to the proposed action under Section 10587 if the person has been given advice of proposed action.

(2) Apply for a restraining order under Section 10588, whether or not the person has been given advice of proposed action.

CROSS-REFERENCES

Definitions

Court supervision § 10401
Person § 56
Personal representative § 58
Effect of restraining order § 10589

§ 10589. Court supervision and notice of hearing required if objection made

10589. (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 10587 or a restraining order issued under Section 10588, the personal representative shall, if the personal representative desires to take the proposed action, take the proposed action under the provisions of this code dealing with court supervision of that kind of action.

(b) If the proposed action is one that would not require court supervision even if the personal representative had not been granted authority to administer the estate under this part but the personal representative has given advice of the proposed action and has notice of a written objection made under Section 10587 to the proposed action, the personal representative shall, if he or she desires to take the proposed action, 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.

(c) A person who objects to a proposed action as provided in Section 10587 or serves a restraining order issued under Section 10588 in the manner provided in that section shall be given notice of any hearing on a petition for court authorization or confirmation of the proposed action.

(d) Failure of the personal representative to comply with this section is a violation of his or her fiduciary duties and is grounds for removal from office.

Comment. Subdivisions (a) and (d) of Section 10589 continue subdivision (b) of former Probate Code Section 591.5 without substantive change. Subdivision (b) is new. Subdivision (c) restates subdivision (e) of former Probate Code Section 591.5 without substantive change.

Where advice of proposed action is required, subdivision (a) requires that the proposed action be taken only under court supervision if the personal representative has notice of a written objection or a restraining order with respect to the proposed action. And, when the proposed action is taken under court supervision, 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, if the proposed action is the sale of real property, notice of sale must be published. See Section 10300. See also Section 10303 (notice of sale need not be published where will directs or authorizes the sale of property).

Subdivisions (a) and (b) of Section 10589 implement subdivision (b) of Section 10580. Subdivision (b) of Section 10580 is a new provision that permits a personal representative who has been granted independent administration authority to give advice of proposed action with respect to a proposed action that could be taken without giving advice of proposed action. The personal representative may give advice of proposed action (although not required to do so) in order that the person receiving the advice will waive the right to object to the proposed action if the person fails to object within the time allowed after receipt of the advice. See Section 10590.

Subdivision (a) of Section 10589 applies to not only to a case where advice of proposed action is required but also to a case where advice of proposed action is not required to be given for a proposed action that would require court supervision if independent administration authority had not been granted. If the personal representative elects to give advice of proposed action in such a case, even though not required, subdivision (a) permits the personal representative to take the proposed action only under court supervision if the personal representative has notice of an objection to the proposed action or of a restraining order issued with respect to the proposed action.

Subdivision (b) of Section 10589 applies where the personal representative determines to give advice of proposed action in a case where the personal representative would be authorized to take the proposed action without court supervision even if the personal representative had not been granted independent administration authority. In such a case, subdivision (b) requires that the proposed action be taken only after court authorization on a petition for instructions if the personal representative has notice of a written objection to the proposed action.

The benefit of the new procedure under subdivision (b) of Section 10580 and subdivisions (a) and (b) of Section 10589 is that the new procedure permits a court review of the proposed action before it is taken if the personal representative has notice of an objection rather than having the objection first made after the action has been taken. For further discussion, see the Comment to Section 10580.

Subdivision (c) of Section 10589 requires that notice of hearing be given to a person who has made a written objection under Section 10587 or has served a restraining order under Section 10588. See Section 10590(a) (method of objecting to proposed action). Subdivision (c) requires that notice of hearing be given of the hearing of a petition for instructions authorizing a proposed action described in subdivision (b) as well as of a hearing on a petition for court authorization or confirmation of a proposed action described in subdivision (a).

In connection with subdivision (d) of Section 10589, see Sections 9601-9603 (liability of personal representative for breach of fiduciary duties).

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

§ 10590. Effect of failure to object to proposed action

10590. (a) For the purposes of this section, a person who has been given advice of proposed action as provided in Sections 10580 to 10586, inclusive, may object to the proposed action only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 10587.

(2) Serving a restraining order obtained under Section 10588 before the date specified in the advice of proposed action on or after which the proposed action is to be taken, or before the proposed action is actually taken, whichever is the later time.

(b) Except as provided in subdivisions (c) and (d), ~~the failure to object as provided in subdivision (a) is a waiver of any~~ a person who has been given advice of a proposed action, as provided in Sections 10580 to 10586, inclusive, and who has failed to object as provided in subdivision (a) waives the right to have the court later review the proposed action or otherwise to object to the proposed action after it has been taken.

(c) Subject to Sections 10582 to 10584, inclusive, the court may review the action taken upon motion of a any interested person who (1) establishes that he or she did not actually receive the advice of proposed action before the time to object expired ~~or (2) establishes by clear and convincing evidence that the personal representative violated an applicable fiduciary duty in taking the action.~~

(d) The court may review the action of the personal representative on its own motion where necessary to protect the interests of any ~~of the following:~~

~~(1) A creditor of the estate who did not actually receive advice of the proposed action.~~

~~(2) An~~

an heir or devisee who establishes both of the following:

(A) (1) At the time the advice was given the heir or devisee lacked capacity to object to the proposed action or was a minor.

(B) (2) No advice of proposed action was actually received by the guardian, conservator, or other personal representative of the heir or devisee.

Comment. Subdivision (a) of Section 10590 continues the substantive effect of the first sentence of subdivision (d) of former Probate Code Section 591.5.

Subdivisions (b) and (c) restate the second sentence and a portion of the third sentence of subdivision (d) of former Probate Code Section 591.5.

Subdivision (b) applies only where the advice of proposed action was given as provided in Sections 10580-10586. See Sections 10585 (advice of proposed action form must be "properly completed"), 10586 (delivery or mailing required). The advice must contain the information required by the Judicial Council form, including a description of the proposed action in reasonably specific terms, with additional information if the proposed action involves a sale or exchange of real property or an option to purchase real property. See Section 10585.

Subdivision (d) supersedes the portion of the last sentence of subdivision (d) of former Probate Code Section 591.5 which permitted the court to review the proposed action on its own motion. Subdivision (d) narrows the situations where the court can review the action of the personal representative on its own motion to cases where necessary to protect the interests of an heir or devisee who lacked capacity to object to the proposed action or was a minor. As to the right of a person who failed to object to the action to obtain court review, see subdivision (c). The court is not authorized to review the proposed action on motion of a person who consented to the proposed action (Section 10582) or waived the advice of proposed action (Section 10583). See the Comments to Sections 10582 and 10583. See also Section 10584 (revocation of consent or waiver). A guardian ad litem can be appointed to object, waive, or consent to proposed actions under the Independent Administration of Estates Act where the person entitled to advice of proposed action lacks the capacity to act with respect to the proposed action.

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

Note. As set out above, Section 10590 is revised along the lines suggested by Chuck Collier and as recommended by the Estate Planning, Trust and Probate Law Section and others who commented on the Tentative Recommendation. The subcommittee at the October meeting deferred making any decision on how this section should be revised until the November meeting when a quorum will be present. The Comment to the section has been revised to explain the section as revised.

§ 10591. Protection of persons dealing in good faith with personal representative

10591. (a) The failure of the personal representative to comply with subdivision (a) of Section 10580 and with Sections 10581, 10585, 10586, 10589, and 10590, and the taking of the action by the personal representative without such compliance, does not affect the validity of the action so taken or the title to any property conveyed or transferred to bona fide purchasers or the rights of third persons dealing in good faith with the personal representative who changed their position in reliance upon the action, conveyance, or transfer without actual notice of the failure of the personal representative to comply with those provisions.

(b) No person dealing with the personal representative has any duty to inquire or investigate whether or not the personal representative has complied with the provisions listed in subdivision (a).

Comment. Section 10591 restates subdivision (b) of former Probate Code Section 591.4 and subdivision (c) of former Probate Code Section 591.5 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Article 3. Statutory Waiver of Advice of Proposed Action Form

§ 10600. Statutory Waiver of Advice of Proposed Action Form

10600. (a) The Judicial Council may prescribe a Statutory Waiver of Advice of Proposed Action Form. A form prescribed by the Judicial Council pursuant to this subdivision shall include the substance of the warning set out in subdivision (b). If the Judicial Council prescribes a form pursuant to this subdivision, that form shall be used instead of the form set out in subdivision (b).

(b) Except as provided in subdivision (a), a Statutory Waiver of Advice of Proposed Action Form shall be in substantially the form set out in this subdivision and shall include the warning set out in this

section, either typed in all capital letters or printed in not less than 10-point bold-face type or a reasonable equivalent thereof:

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of _____

No. _____

(deceased)

WAIVER OF NOTICE OF PROPOSED ACTIONS
(California Probate Code Section 10600)

WARNING. THE LAW REQUIRES THAT THE PERSONAL REPRESENTATIVE GIVE YOU NOTICE OF CERTAIN ACTIONS THE PERSONAL REPRESENTATIVE PROPOSES TO TAKE WITH RESPECT TO THE ESTATE. THE PERSONAL REPRESENTATIVE MUST GIVE YOU THIS NOTICE BEFORE TAKING THE ACTION.

YOU HAVE THE RIGHT (1) TO OBJECT TO A PROPOSED ACTION AND (2) TO REQUIRE THAT THE COURT SUPERVISE THE PROPOSED ACTION. IF YOU DO NOT OBJECT BEFORE THE PERSONAL REPRESENTATIVE ACTS, THEN YOU LOSE THAT RIGHT AND YOU CANNOT OBJECT LATER.

IF YOU SIGN THIS FORM, YOU GIVE UP YOUR RIGHT TO RECEIVE NOTICE. THIS MEANS THAT YOU GIVE THE PERSONAL REPRESENTATIVE THE RIGHT TO TAKE ACTIONS CONCERNING THE ESTATE WITHOUT FIRST GIVING YOU THE NOTICE REQUIRED BY LAW, AND YOU CANNOT OBJECT AFTER THE ACTION IS TAKEN.

IF YOU SIGN THIS FORM, YOU MUST ALSO CHECK ONE OF THE BOXES BELOW TO INDICATE WHETHER YOU GIVE UP YOUR RIGHT TO RECEIVE:

(1) A NOTICE OF ANY AND ALL ACTIONS THE PERSONAL REPRESENTATIVE MAY DECIDE TO TAKE.

(2) A NOTICE OF ANY OF THE PARTICULAR KINDS OF ACTIONS YOU LIST IN THIS FORM.

YOU HAVE THE RIGHT TO CANCEL THIS WAIVER AT ANY TIME BY SIGNING AND DATING THE "CANCELLATION OF WAIVER" PORTION OF THIS FORM AND THEN DELIVERING THIS FORM TO THE PERSONAL REPRESENTATIVE. THE CANCELLATION IS NOT EFFECTIVE UNTIL IT IS ACTUALLY RECEIVED BY THE PERSONAL REPRESENTATIVE.

IF YOU DO NOT UNDERSTAND THIS FORM, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

1. The personal representative of the estate of the deceased is:

2. The personal representative has authority to administer the estate without court supervision under the Independent Administration of Estates Act (California Probate Code Sections 10400-10600)

3. By signing below, I waive my right to notice of proposed actions with respect to the following (Check only one box to indicate your choice):

(a) Any and all actions the personal representative is authorized to take under the Independent Administration of Estates Act.

(b) Any of the kinds of transactions listed below that the personal representative is authorized to take under the Independent Administration of Estates Act.

_____.

Dated: _____
(SIGNATURE OF PERSON SIGNING WAIVER)

Print your name: _____

Your address: _____

CANCELLATION OF WAIVER

I cancel this waiver.

NOTICE. Check the box, date and sign below, and return this entire form to the personal representative if you want to cancel this waiver. (You may want to make a copy for your records.)

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF PERSON CANCELLING)

Comment. Section 10600 is new. See the Comments to Sections 10583 and 10584. The waiver may be revoked by executing a writing revoking the waiver or by executing the "Cancellation of Waiver" portion of the form and then delivering the writing or form to the personal representative. See Section 10584. A copy of the form with the "Cancellation of Waiver" portion executed may be filed with the court. See Section 10584. The revocation is effective only with respect to proposed actions that have not been taken at the time the revocation is actually received by the personal representative.

Note. Section 10600 has been revised along the lines suggested by the subcommittee at the October meeting. The section should be reviewed carefully.