

Memorandum 87-3

Subject: Study L-1028 - Independent Administration of Estates Act

Attached is a draft of a revised recommendation relating to the Independent Administration of Estates Act. In preparing this draft, the staff has reviewed the comments of the State Bar Team and Mr. Collier. A number of the suggestions they made are incorporated in the draft. Some of the other suggestions they made are noted in the staff draft under the sections to which they relate.

The preliminary portion of the draft recommendation indicates the more significant changes in existing law that the recommendation proposes. Other changes are indicated in the Comments to the sections of the proposed legislation. The previous version of this recommendation has been substantially revised and reorganized. Since this recommendation is presented for approval for printing and submission to the 1987 Legislature, you may want to read the statute and Comments with some care prior to the meeting.

The proposed legislation includes references to Sections 1200.5 and 1202 of the Probate Code. These are general notice of hearing provisions that will be superseded by our recommendation on that subject which we plan to submit in 1987. We will substitute a reference to the new section that will supersede the existing Probate Code section before the bill is introduced.

If the recommendation is approved by the Commission, the staff plans to check it carefully before it is printed. We have not had the time to make this final check; we want to send you the draft now so you will have time to review it before the meeting.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

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STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION

relating to

INDEPENDENT ADMINISTRATION OF ESTATES ACT

January 1987

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January 19, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new Estate and Trust Code for enactment by the Legislature. The new code would replace the existing Probate Code.

The Commission has decided not to delay submitting recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the new code.

The recommended legislation reorganizes and restates the existing provisions of the Independent Administration of Estates Act (existing Prob. Code §§ 591-591.9). Some substantive changes are recommended. Experience under the Act indicates that these changes are needed.

Respectfully submitted,

ARTHUR K. MARSHALL
Chairperson

CONTENTS

	<u>Page</u>
INTRODUCTION	1
RESTRICTING AUTHORITY OF PERSONAL REPRESENTATIVE HAVING "LIMITED AUTHORITY"	3
RESTRICTING AUTHORITY OF PERSONAL REPRESENTATIVE IN CONFLICT OF INTEREST SITUATIONS	4
SPECIAL ADMINISTRATOR	4
GIVING NOTICE OF PROPOSED ACTION	5
Change in Terminology	5
Using Notice of Proposed Action Procedure Where Giving of Notice Not Mandatory	5
Substituting Specific Powers for General Power to "Convey" Property	6
Expanding Requirement that Notice of Proposed Action be Given	6
Making disclaimer.....	7
Conveying to person given option in will to purchase property	7
Extending exclusive right to sell property	7
Selling Certain Over-the-Counter Securities Without Giving Notice of Proposed Action	8
STATUTORY WAIVER OF NOTICE OF PROPOSED ACTION FORM	8
REVOCATION OF WAIVER OR CONSENT	9
REVIEW UPON COURT'S OWN MOTION OF ACTIONS OF PERSONAL REPRESENTATIVE	9
NOTICE OF HEARING	10
SANCTION FOR FAILURE TO COMPLY WITH STATUTE	11

RECOMMENDED LEGISLATION

(A detailed Table of Contents of the recommended legislation is found immediately before the text of the recommended legislation.)

INTRODUCTION

The Independent Administration of Estates Act,¹ enacted in 1974,² permits the court to authorize the personal representative to administer a decedent's estate with a minimum of supervision.³

The personal representative may petition the court for authority to administer the estate under the Act.⁴ The court must grant the authority unless good cause is shown why it should not be granted.⁵

If the authority is granted, many actions that otherwise would be taken under court supervision may be taken without court supervision.⁶ However, the personal representative must give notice of the proposed action to affected persons before taking some kinds of actions that affect the estate.⁷ If an interested person objects, the

1. Prob. Code §§ 591-591.9.

2. 1974 Cal. Stat. ch. 961. For subsequent amendments and additions to the 1974 act, see 1977 Cal. Stat. ch. 243; 1978 Cal. Stat. ch. 298; 1980 Cal. Stat. ch. 955; 1982 Cal. Stat. ch. 1521; 1983 Cal. Stat. ch. 17; 1984 Cal. Stat. chs. 144, 451, 1017; 1985 Cal. Stat. chs. 359, 982.

3. The enactment was a response to public criticism of the probate process as requiring too much court involvement and attorneys' time, and being too complex and costly. See Note, *Probate Reform: California's Declaration of Independent Administration*, 50 S. Cal. L. Rev. 155 (1976).

4. Prob. Code § 591.1.

5. Prob. Code § 591.1. See also Prob. Code § 591.7 (revocation of authority where good cause shown). Independent administration authority may not be granted if the decedent's will provides that the decedent's estate shall not be administered under the Act. Prob. Code § 591.1.

6. Prob. Code § 591.6.

7. Prob. Code §§ 591.3-591.4, 591.8. The existing statute calls this notice "advice of proposed action." See Section 591.3(a)(2).

"Advice of the proposed action" must be given to the devisees and legatees whose interest in the estate is affected by the proposed action; to the heirs of the decedent in intestate estates; to the State of California if any portion of the estate is to escheat to it; and to any persons who have filed a request for special notice pursuant to Probate Code Section 1202 (the persons who may request special notice

personal representative may take the proposed action only under court supervision.⁸

The existing statutory provisions consist of long, overlapping sections that are incomplete and poorly organized. Some kinds of actions that affect the estate are not specifically mentioned in the statute. It is sometimes difficult determine whether or not notice of the proposed action must be given before a particular action may be taken.

The proposed legislation reorganizes the existing statutory provisions, fills in gaps, and makes clear whether notice is required before a particular action may be taken. A number of changes in existing law are proposed. The more important substantive changes are described below.⁹

include a creditor, a beneficiary under a trust, any other person interested in the estate, and the State Controller).

"Advice of proposed action" is required for the following actions: selling or exchanging real property, granting options to purchase real property, selling or exchanging personal property (with certain exceptions), leasing real property for more than a year, entering into any contract (other than a lease of real property) not to be performed within two years, selling or incorporating or operating for longer than six months an unincorporated business of the decedent, commencing payment of or increasing a family allowance or paying a family allowance for more than 12 months after the death of the decedent, investing funds of the estate (with certain exceptions), completing a contract of the decedent to convey real or personal property, borrowing money, executing a mortgage or deed of trust or giving other security, and determining specified claims to real or personal property. Prob. Code § 591.3.

8. Prob. Code § 591.5.

9. Minor and technical revisions are not described below. They are noted in the Comments which follow the text of the sections of the recommended legislation set out in this Recommendation.

RESTRICTING AUTHORITY OF PERSONAL REPRESENTATIVE
HAVING "LIMITED AUTHORITY"

Under existing law, the personal representative may be granted "full authority" or "limited authority."¹⁰ Limited authority allows independent administration without authority to sell, exchange, or grant an option to purchase real property. Full authority includes authority to sell, exchange, or grant an option to purchase real property.

The proposed legislation further limits the authority of a personal representative who has only limited authority. Limited authority no longer will allow the personal representative to borrow money with the loan secured by an encumbrance upon real property.¹¹ This new limitation is necessary to protect the beneficiaries of the estate. The bond of a personal representative having only limited authority does not protect against the risk that the personal representative will borrow money on real property of the estate and divert the money to his or her own use.¹²

10. See Prob. Code § 591.1(b). The proposed law uses the terms "full independent administration authority" and "limited independent administration authority." Although the existing statute does not use these terms, they are used in practice and in the Judicial Council form. See Petition for Probate (Form Approved by the Judicial Council of California DE 111 (Rev. January 1, 1986)).

11. The new limitation would not apply to a personal representative who was granted limited authority prior to July 1, 1988 (the operative date of the proposed legislation).

12. See Prob. Code § 591.9(b) (bond includes value of real property only if the personal representative has full authority).

**RESTRICTING AUTHORITY OF PERSONAL REPRESENTATIVE
IN CONFLICT OF INTEREST SITUATIONS**

Existing law does not preclude the use of independent administration authority in situations where the personal representative may have a conflict of interest. The proposed legislation permits the following actions to be taken only under the supervision of the court:

- Sale of property of the estate to the personal representative.
- Exchange with the personal representative of property of the estate for other property.
- Grant to the personal representative of an option to purchase property of the estate.
- Allow, pay, or compromise a claim of the personal representative against the estate.
- Compromise or settle a claim, action, or proceeding by the estate against the personal representative.
- 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.

The Commission's separate recommendation relating to supervised administration of a decedent's estate includes special provisions that deal with these potential conflict of interest situations.¹³

SPECIAL ADMINISTRATOR

The existing independent administration statute does not permit a special administrator to use the independent administration procedure.¹⁴ The proposed legislation permits independent administration authority to be granted to a special administrator if the special administrator is appointed with the powers of a general

13. See proposed Sections 9830, 9834, 9880-9885 contained in *Recommendation Relating to Supervised Administration of Decedent's Estate* (October 1986). See also existing Prob. Code § 703.

14. Prob. Code § 591.1.

administrator.¹⁵ 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.

GIVING NOTICE OF PROPOSED ACTION

Change in Terminology

Existing law designates the notice of the proposed action that is given to interested persons as an "advice of proposed action."¹⁶ The proposed legislation designates this notice as a "notice of proposed action." This change will make the notice more understandable to the interested persons who are given the notice.¹⁷

Using Notice of Proposed Action Procedure Where Giving of Notice Not Mandatory

The proposed legislation includes a new procedure that permits the personal representative to give notice of a proposed action even though the independent administration statute does not require that notice be given before taking that action. Failure to object to the proposed action has the same effect as failure to object to a proposed action for which notice is required. This new procedure will permit the personal representative to determine whether an interested person objects to the proposed action and will protect the personal representative if no one objects. It will also encourage the personal representative to keep persons interested in the estate informed of

15. The independent administration authority will be granted upon request unless (1) good cause is shown why the authority should not be granted or (2) the decedent's will provides that the decedent's estate shall not be administered under independent administration authority.

16. Prob. Code § 591.3(a)(2).

17. In this recommendation, "notice of proposed action" is used in place of "advice of proposed action" in describing both the existing statute and the proposed legislation.

proposed actions and will require court approval of the proposed action before it is taken if there is an objection.

Substituting Specific Powers for General Power to "Convey" Property

Under existing law, the personal representative who has independent administration authority has a general power to "convey,"¹⁸ but there is no general requirement that notice of proposed action be given for a conveyance made pursuant to the exercise of this general power.¹⁹

The proposed legislation includes a number of new provisions that are designed to fill in the gaps in the existing statute so that the personal representative will have the power to engage in all of the specific types of estate transactions that might involve a conveyance. The proposed legislation makes clear whether or not notice of proposed action is required for each of the specific types of transactions that may involve a conveyance. A provision authorizing the personal representative to make any conveyance necessary to effectuate the exercise of any specific power is substituted in the proposed legislation for the general power to convey under the existing statute. This new statutory scheme will eliminate the existing uncertainty as to when notice is required for transactions that may require a conveyance.

Expanding Requirement That Notice of Proposed Action Be Given

The Commission has reviewed each of the kinds of actions the personal representative is authorized to take under independent administration authority and has considered whether notice should be required. As a result of this review, the Commission has concluded that notice should be required in three cases where notice is not now specifically required.

18. Prob. Code § 591.6(a).

19. In some cases, notice of proposed action is required for specific types of actions that may involve a conveyance. *E.g.*, Prob. Code § 591.3(b)(9) (notice of proposed action required for completing a contract entered into by the decedent to convey real or personal property).

Making disclaimer. Existing law gives the personal representative the power to make a disclaimer,²⁰ and this power may be exercised without giving notice of proposed action.²¹ The power to make a disclaimer on behalf of the estate could have the effect of taking property from the estate beneficiaries and giving it to another. For this reason, notice should be required for a disclaimer.

Conveying to person given option in will to purchase property. The proposed legislation adds a new provision to make clear that the personal representative has the power to convey or transfer property to a person given an option in the decedent's will to purchase the property. Notice is required to exercise this power. This requirement will protect the beneficiaries and creditors in a case where the option is for a price less than the fair market value of the property.

Extending exclusive right to sell property. The existing statute gives the personal representative the power to grant an exclusive right to sell property for a period not to exceed 90 days, but the statute is silent on whether the personal representative has the power to grant one or more extensions of the right.²² Notice of proposed action is not required to grant an exclusive right to sell property.²³

The proposed legislation makes clear that the personal representative has 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. The proposed legislation permits the personal representative to grant two extensions without giving notice of

20. Prob. Code § 591.6(n).

21. See Prob. Code § 591.3 (disclaimer not included in list of proposed actions for which notice of proposed action required).

22. Prob. Code § 591.6(o).

23. See Prob. Code § 591.3 (granting exclusive right to sell not included in list of proposed actions for which notice of proposed action required).

proposed action. However, notice must be given if the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days. The persons interested in the estate are entitled to notice where it is proposed to tie up property of the estate under an exclusive right to sell agreement -- and possibly delay the closing of probate -- for more than 270 days.

Selling Certain Over-the-Counter Securities Without Giving Notice of Proposed Action

Under existing law,²⁴ notice of proposed action must be given where securities are proposed to be sold, unless the securities are to be sold on an established stock or bond exchange. The proposed legislation permits the sale of national market system over-the-counter securities without giving notice. Quotations for these securities are published daily in the Wall Street Journal and many newspapers.

STATUTORY WAIVER OF NOTICE OF PROPOSED ACTION FORM

Existing law permits a person to waive the right to receive notice only with respect to a particular proposed action.²⁵ A general waiver of the right to receive notice of all proposed actions is not permitted. Nor is a waiver of the right to receive notice for all transactions of a particular kind permitted.

The proposed legislation provides for a Statutory Waiver of Notice of Proposed Action Form. Use of this form permits a person to waive the right to receive notice of all proposed transactions or to waive the right to receive notice of particular kinds of proposed actions. The new form includes an appropriate warning to the person using the form of the consequences of signing the form. The new form also includes a portion that a person can complete and return to the personal representative if the person desires to revoke the waiver.

24. Prob. Code § 591.3(b)(3).

25 Prob. Code § 591.3(d).

Using the new form, a person can, for example, waive the right to receive notice of actions with respect to investing funds of the estate without waiving the right to receive notice with respect to sales of real property. Or a person who trusts the personal representative and is not interested in the management of the estate can waive the right to any notice at all with respect to any actions the personal representative might decide to take.

REVOCATION OF WAIVER OR CONSENT

The existing statute does not specify how a waiver of notice or a consent to a proposed action can be revoked. The proposed legislation fills in this gap: A revocation of a waiver or consent must be in writing and must be received by the personal representative in order to be effective.²⁶

REVIEW UPON COURT'S OWN MOTION OF ACTIONS OF PERSONAL REPRESENTATIVE

Under existing law, failure to object to a proposed action is a waiver of the right to have the court later review the action taken, unless the person who fails to object establishes that he or she did not actually receive notice of the proposed action before the time to object expired.²⁷ But, even though there were no objections to the proposed action, the court on its own motion can review the action of the personal representative after the action is taken.²⁸

The right of a person who did not actually receive notice of proposed action to obtain later court review of the action taken is continued by the proposed legislation. But the court's power to review a proposed action on its own motion is limited: The court may

26. The revocation may be filed with the court, but whether or not it is filed with the court does not affect its effectiveness.

27. Prob. Code § 591.5(d).

28. Prob. Code § 591.5(d).

review the proposed action on its own motion to protect an heir or devisee who lacks capacity or is a minor unless the guardian, conservator, or other personal representative of the heir or devisee either (1) waived notice or consented to the proposed transaction or (2) received notice of the proposed action and failed to object to the proposed action. The purpose of the notice of proposed action is to bind the persons who receive it if they fail to make a timely objection to the proposed action. Limiting the scope of review by the court on its own motion will further this purpose by protecting the personal representative from a later objection to the action taken where the person or the person's representative received notice²⁹ and failed to make a timely objection.

NOTICE OF HEARING

If a petition for appointment of a personal representative also requests authority to administer the estate under the Independent Administration of Estates Act, existing law requires that the published notice of hearing on the petition state that the petition requests that _____ be appointed as personal representative to administer the estate of the decedent "under the Independent Administration of Estates Act."³⁰ For the quoted phrase, the proposed legislation substitutes the following:

The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. Before taking some actions, the personal representative will be required to give prior notice to interested persons. The petition will be granted unless good cause is shown why it should not be.

29. The proposed legislation requires that notice of proposed action be given using the Judicial Council form or its substantial equivalent.

30. Prob. Code § 333. See also Petition for Probate - Form Approved by the Judicial Council of California. DE-111 (Rev. January 1, 1986).

The notice of hearing also is given to the heirs, devisees, and each person named as personal representative who is not petitioning.³¹ The additional language added to the notice of hearing gives information to these persons and to persons who read the published notice. This information describes the nature of independent administration authority and sets out the standard used by the court to determine whether that authority should be granted.

SANCTION FOR FAILURE TO COMPLY WITH STATUTE

The existing statute includes a provision that the personal representative may be removed from office for taking a proposed action after knowledge of an objection.³² The proposed legislation adds language that makes clear that the personal representative also may be removed from office for failure to give notice of proposed action as required by the statute. In determining whether to remove the personal representative under this provision, the court should consider all the circumstances of the particular case.

31. Notice of the hearing must be personally served upon or mailed to these persons. See Prob. Code § 328.

32. Prob. Code § 591.5(b)(last sentence). The existing provision also states that taking a proposed action after knowledge of an objection is "a violation of the fiduciary duty" duty of the personal representative. The proposed legislation omits this language as being unnecessary.

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 6. INDEPENDENT ADMINISTRATION OF ESTATES

CHAPTER 1. GENERAL PROVISIONS

- § 10400. Citation of this part
- § 10401. "Court supervision" defined
- § 10402. "Full independent administration authority" defined
- § 10403. "Limited independent administration authority" defined
- § 10404. This part not applicable if will so provides
- § 10405. Special administrator
- § 10406. Application of part

CHAPTER 2. GRANTING OR REVOKING INDEPENDENT ADMINISTRATION AUTHORITY

- § 10450. Petition for order granting independent administration authority
- § 10451. Notice of hearing
- § 10452. Hearing; order; endorsement on letters
- § 10453. Increase in amount of bond
- § 10454. Revocation of independent administration authority

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

- § 10500. Administration without court supervision
- § 10501. Matters requiring court supervision
- § 10502. Powers exercisable under independent administration authority
- § 10503. Manner of sale of property under independent administration authority

Article 2. Powers Exercisable Only After Giving Notice of Proposed Action

- § 10510. Article describes powers that may be exercised only after giving notice of proposed action
- § 10511. Investing in securities
- § 10512. Investing money in manner provided by will
- § 10513. Selling or exchanging real property
- § 10514. Selling or incorporating decedent's business
- § 10515. Borrowing; encumbering estate property
- § 10516. Granting option to purchase real property
- § 10517. Transferring to person given option to purchase in will
- § 10518. Completing contract of decedent to convey or transfer property
- § 10519. Determining claims to property claimed to belong to decedent or other person
- § 10520. Making a disclaimer

**Article 3. Powers the Exercise of Which Requires Giving of
Notice of Proposed Action Under Some Circumstances**

- § 10530. Article describes powers that may in some circumstances be exercised only after giving notice of proposed action
- § 10531. Managing and controlling estate property generally
- § 10532. Entering into contracts
- § 10533. Continuing operation of decedent's business
- § 10534. Paying family allowance
- § 10535. Leasing real and personal property
- § 10536. Selling or exchanging personal property
- § 10537. Granting or extending exclusive right to sell property

**Article 4. Powers Exercisable Without
Giving Notice of Proposed Action**

- § 10550. Article describes powers that may be exercised without giving notice of proposed action
- § 10551. Powers that any personal representative may exercise without court supervision
- § 10552. Acting on claims against estate
- § 10553. Instituting and defending actions and proceedings
- § 10554. Compromising or settling claim, action, or proceeding
- § 10555. Modifying terms of obligation
- § 10556. Conveying property to effectuate a specific power
- § 10557. Paying taxes, assessments, and expenses
- § 10558. Purchasing annuity granted in will
- § 10559. Exercising restricted option
- § 10560. Purchasing securities or commodities sold short
- § 10561. Holding securities in name of nominee or in other form
- § 10562. Exercising security subscription or conversion rights
- § 10563. Abandoning tangible personal property
- § 10564. Making repairs and improvements
- § 10565. Accepting deed in lieu of foreclosure or trustee's sale
- § 10566. Giving partial satisfaction of mortgage or partial reconveyance under trust deed

CHAPTER 4. NOTICE OF PROPOSED ACTION PROCEDURE

Article 1. Notice of Proposed Action Procedure

- § 10580. When notice of proposed action required or permitted
- § 10581. Persons to whom notice must be given
- § 10582. Consent to proposed action
- § 10583. Waiver of notice
- § 10584. Revocation of consent or waiver
- § 10585. Form and contents of notice of proposed action
- § 10586. Delivery or mailing of notice
- § 10587. Delivery or mailing of objection to proposed action
- § 10588. Restraining order

- § 10589. Court supervision and notice of hearing required if personal representative has notice of objection
- § 10590. Effect of failure to object to proposed action
- § 10591. Protection of persons dealing in good faith with personal representative
- § 10592. Failure of personal representative satisfy statutory requirements grounds for removal from office

Article 2. Statutory Form for Waiver of Notice of Proposed Action

- § 10600. Statutory Waiver of Notice of Proposed Action Form

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 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 Section 591.2 without substantive change. See also Section 10503 (requirements applicable to court confirmation of sales of real property do not apply to sales under independent administration).

§ 10402. "Full independent administration authority" defined

10402. As used in this part, "full independent administration authority" means authority to administer the estate under this part that includes all the powers granted under this part.

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)). As to the exercise of powers under this part, see generally Section 10502 and the Comment to that section.

§ 10403. "Limited independent administration authority" defined

10403. As used in this part, "limited independent administration authority" means authority to administer the estate under this part that includes all the powers granted under this part except the power to do any of the following:

- (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. Section 10403 is new. See the Comment to Section 10402. Section 10403 is consistent with prior law except for the addition of subdivision (d) which is a new limitation on the powers of a personal representative who has only limited independent administration authority.

Subdivision (d) is 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. In connection with subdivision (d), see Sections 10450(b)(2), 10452(c), and 10501(e). See also the Comment to Section 10501.

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 authority to sell real property. See Section 10406(c).

CROSS-REFERENCES

Definitions

Real property § 68

§ 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 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 10502 (introductory clause) (decedent's 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 be granted authority to administer the estate under this part if the special administrator is appointed with the powers of a general administrator.

Comment. Section 10405 replaces the third sentence of subdivision (a) of former 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.

§ 10406. Application of part

10406. (a) Subject to subdivision (c), 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.

(c) 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. Subdivision (a) of Section 10406 is a new provision that makes clear that -- subject to subdivision (c) -- 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.

Under subdivision (b), a personal representative who was granted authority prior to January 1, 1985, to administer the estate under the Independent Administration of Estates Act is governed by the provisions of the Independent Administration of Estates Act that were applicable at the time the petition requesting independent administration authority was granted. But paragraph (3) of subdivision (a) provides an exception that 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 after that date requesting authority to administer the estate under the independent administration statute in effect at the time the petition is filed and the petition is granted.

Subdivision (c) preserves the authority of a personal representative prior to July 1, 1988, to borrow money secured by real property 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 July 1, 1988, such a personal representative had authority to borrow money with the loan secured by an encumbrance upon real property of the estate. This part (which becomes operative on July 1, 1988) 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. See also Section 10501(e) and the Comment to that section. Subdivision (c) of Section 10406 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

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) The petition may request either of the following:

- (1) Full independent administration authority.
- (2) Limited independent administration authority.

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

Subdivision (b) of Section 10450 restates subdivision (b) of former Section 591.1 without substantive change except that subdivision (b) of Section 10450 uses the defined terms "full independent administration authority" and "limited independent administration authority." See Sections 10402 (defining "full independent administration authority") and 10403 (defining "limited independent administration authority"). See also Sections 10452(c) (endorsement on letters) and 10501(e) (matters requiring court supervision).

Subdivision (b) of Section 10450 permits the petitioner either (1) to request full independent administration authority (this authority permits the personal representative to administer the estate using all of the powers granted by this part) or (2) to request limited independent administration authority. Limited independent administration authority permits the personal representative to exercise all of the powers granted by this part except the power 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 independent administration authority"). For example, the personal representative granted limited administration authority cannot use the independent administration procedure to sell or exchange real property but is authorized to use independent administration authority to sell listed and certain over the counter securities without the need to give notice of proposed action (see paragraphs (1) and (2) of subdivision (b) of Section 10536) and to invest in certain securities using the notice of proposed action procedure (see Section 10511). 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 independent administration 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 to use independent administration authority in a case where there is a lack of agreement as to the desirability of the transaction among the persons interested in the estate or where some of the heirs or devisees who would receive notice 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 10502 (introductory clause). A special administrator may be granted independent administration authority only if 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 independent administration authority § 10402

Limited independent administration authority § 10403

Personal representative § 58

Verification of petition § 7203

Note. Team 4 believes that the concept of limited authority should be eliminated. Apparently, the team believes that the personal representative who is granted independent administration authority should have full authority and need not exercise that authority with respect to real property transactions unless the personal representative so desires. Adoption of this suggestion would simplify the statute. However, it appears that there are a number of lawyers who frequently request only limited administration authority for the estates they represent.

§ 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 as provided in Section 1200.5. In addition, at least 15 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 (1) the person named as executor in the will of the decedent if not the petitioner, (2) all known devisees and to all known heirs of the decedent, and (3) 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 will avoid the need to obtain court approval for many actions taken in connection with the estate. Before taking some actions, the personal representative will be required to give prior notice to interested persons. 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 Section 591.1 without substantive change.

Subdivision (b) restates subdivision (d) of former Section 591.1 with the following additions and changes. A provision is added to require that notice of hearing be given to the person named as executor in the will of the decedent if not the petitioner. The phrase of "known devisees" is substituted for "legatees and devisees." See Section 34 (defining "devisee"). See also Section XXXX (notice to known devisees). The reference in former Section 591.1 to Section 1200 is corrected to refer to Section 1200.5. The time for giving notice is changed from 10 to 15 days to conform to the general 15-day notice requirement of Section 1200.5.

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

CROSS-REFERENCES

Clerk to set petition for hearing § 7202

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Notice to known devisees or known heirs § _____

Proof of giving notice § 7308

§ 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. If the objecting party has shown good cause why only limited independent administration authority should be granted, the court shall grant only limited independent administration 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 independent administration authority, the endorsement shall include a statement that the personal representative has all of the powers granted by this part except the power to do any of the following:

- (1) Sell real property.
- (2) Exchange real property.
- (3) Grant an option to purchase real property.
- (4) Borrow money with the loan secured by an encumbrance upon real property.

Comment. Section 10452 restates subdivisions (f) and (g) of former Section 591.1 without substantive change, except that the endorsement on the letters required by subdivision (c) where limited independent administration authority is granted is made consistent with subdivision (e) of Section 10501. Subdivision (e) of Section 10501 requires court supervision if the personal representative has limited independent administration authority and proposes to borrow money with the loan secured by an encumbrance upon real property of the estate. See the Comment to Section 10501. See also Sections 10403 ("limited independent administration authority" defined), 10450(b)(2) (petition for limited independent administration authority).

The phrase "at or before the hearing" has been added in subdivision (a). The second sentence of subdivision (b) is new and makes clear that the court, for good cause shown, may grant only limited independent administration authority rather than full independent administration authority. See Sections 10402 (defining "full independent administration authority") and 12403 (defining "limited independent administration authority").

CROSS-REFERENCES

Definitions

- Personal representative § 58
- Interested person § 48
- Letters § 52
- Limited independent administration authority § 10403
- Real property § 68
- Petition for limited independent administration authority § 10450(b)(2)

§ 10453. Increase in amount of bond

10453. If the personal representative is otherwise required to file a bond and has full independent administration authority, the court, in its discretion, shall fix the amount of the bond at not more than the estimated value of the personal property, the estimated net

proceeds of the real property authorized to be sold under this part, and the estimated value of the probable annual gross income of all the property belonging to the estate, or, if the bond is to be given by personal sureties, at not less than twice that amount.

Comment. Section 10453 restates subdivision (b) of Section 591.9 but clarifies the language of the section to make clear that the court is required to fix the amount of the bond in an amount not to exceed the amount specified in the section.

Section 10553 applies only where the personal representative is otherwise required to file a bond and has full independent administration authority. See Section 10402 (defining "full independent administration authority"). If the personal representative has only limited independent administration authority and is required to file a bond, the amount of the bond is determined pursuant to Sections 541 and 541.1, which excludes the value of the real property in the estate.

GROSS-REFERENCES

Definitions

Court supervision § 10401
Full independent administration authority § 10402
Personal representative § 58
Property § 62
Real property § 68

§ 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 as provided in Section 1200.5. In addition, 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 15 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 the order under subdivision (c), new letters shall be issued without the endorsement described in subdivision (c) of Section 10452.

Comment. Section 10454 restates former Section 591.7 with the following changes:

(1) The requirement that notice of the hearing be given as provided in Section 1200.5 is new. This additional service will give notice to persons who may be interested in the petition to revoke the independent administration authority.

(2) The requirement that a copy of the petition be served on the personal representative is new.

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. Team 4 suggests that the last sentence of Section 10454(b), commencing with the word "Service," should be deleted. This sentence is found in existing law.

Note. Charles Collier asks: "Query whether under this section the court could cut back the personal representative's power from full power to limited power or whether complete revocation is the only option." To make specific provision for a petition requesting that relief would complicate the statute.

If the Commission desires to adopt the substance of these suggestions, the following section might be used:

§ 10454. Revoking or limiting independent administration authority

10454. (a) Any interested person may file a petition requesting that the court make either of the following orders:

(1) An order revoking the authority of the personal representative to continue administration of the estate under this part.

(2) An order revoking the full independent administration authority of the personal representative and granting the personal representative limited independent administration authority.

(b) The petition shall set forth the basis for the requested order.

(c) Notice of the hearing on the petition shall be given as provided in Section 1200.5.

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

(d) If the personal representative was granted full independent administration authority and the court determines that good cause has been shown, the court shall make an order revoking the full independent administration authority and granting the personal representative limited independent administration authority. Upon the making of the order, new letters shall be issued with the endorsement described in subdivision (c) of Section 10452 that is required where the authority granted is limited independent administration authority.

Comment. Section 10454 restates former Section 591.7 with the following changes:

(1) Section 10454 makes clear that an order may be made which revokes full independent administration authority and instead grants limited independent administration authority.

(2) The requirement that notice of the hearing be given as provided in Section 1200.5 is new. Former Section 591.7 required notice of hearing only to the personal representative. Giving notice of hearing as provided in Section 1200.5 will give notice to other persons who may be interested in the petition.

The requirement of former Section 591.7 that the notice of hearing be personally served upon the personal representative is omitted. The new requirement of Section 10454 that notice of hearing be given under the general notice of hearing provision (Section 1200.5) requires that notice of hearing be given to the personal representative by mail.

CHAPTER 3. ADMINISTRATION UNDER INDEPENDENT ADMINISTRATION AUTHORITY

Article 1. General Provisions

§ 10500. Administration without court supervision

10500. (a) Subject to the limitations and conditions of this part, 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 Section 591.2 without substantive change. See also Section 10401 (defining "court supervision"). Subdivision (b) restates the first sentence of subdivision (b) of former 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 10502 (introductory clause) (decedent's will may restrict powers exercisable under independent administration authority). Notwithstanding that full 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 of Section 10500 also recognizes that independent administration authority must be exercised in compliance with the provisions of this part. Some actions can be taken only if the notice of proposed action procedure is followed. See Article 2 (commencing with Section 10510) and Article 3 (commencing with Section 10530) (actions requiring notice of proposed action). See also Chapter 4 (commencing with Section 10580) (notice of proposed action procedure). For a general provision concerning the exercise of powers under this part, see Section 10502. See also the Comment to Section 10502.

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 decedent's 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 (see Section 10514), the personal representative may elect to petition for instructions under Section 9611 rather than using the notice of proposed action procedure under Chapter 4 (commencing with Section 10580). See also Section 10580(b) (personal representative may use notice of proposed action procedure for an action that could be taken without giving notice of proposed action).

CROSS-REFERENCES

Actions that can be taken only under court supervision § 10501

Definitions

Court supervision § 10401

Personal representative § 58

Limited independent administration authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Will may restrict powers § 10502

§ 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 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. The new limitation on borrowing money does not affect the powers of a personal representative who was granted independent administration authority prior to July 1, 1988. See Section 10406(c). In connection with subdivision (e) of Section 10501, see Sections 10403, 10450(b)(2), and 10452(c) (limited independent administration authority). See also Section 10502 (introductory clause) (decedent's will may restrict powers exercisable under independent administration authority).

Subdivisions (f) to (h), inclusive, of Section 10501 are new. Prior law did not expressly provide that the independent administration procedure could not be used for the types of actions listed in these subdivisions. 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 only 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 only if the statutory supervised administration requirements are satisfied. See Section 9885.

Subdivision (i) makes clear that the personal representative may 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 to compromise or settle a claim, action, or proceeding of the estate against the personal representative or to modify 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. Should subdivisions (f) to (k), inclusive, apply where the personal representative is the only heir or devisee?

§ 10502. Powers exercisable under independent administration authority

10502. Subject to the conditions and limitations of this part and to Section 9600, 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 Article 2 (commencing with Section 10510), Article 3 (commencing with Section 10530), and Article 4 (commencing with Section 10550).

Comment. Section 10502 restates the introductory clause of former Section 591.6 without substantive change except for the portion of former Section 591.6 giving the executor or administrator powers "in addition to any other powers granted by this code," this portion being superseded by Section 10551. See the Comment to Section 10551.

A reference to Section 9600 (duty to manage estate using ordinary care and diligence) has been added to Section 10502 to recognize that the personal representative acts in a fiduciary capacity in exercising the powers under this part. This reference continues and generalizes the substantive effect of the phrase "the applicable fiduciary duties" which appeared in former Section 591.9. The personal representative is required to exercise the power granted under this part 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 10502 recognizes, the powers of the personal representative are subject to the limitations and conditions of this part. Thus, 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 10403, 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 10502 recognizes another limitation on the exercise of powers by the personal representative: The decedent's will may limit the powers of the personal representative under this part. See also Section 10404 (part not applicable if decedent's will so provides).

A further limitation on the exercise of independent limitation powers is that in some cases powers described in this chapter may be exercised only if notice of proposed action is given or the person entitled to notice of proposed action has waived the notice or has consented to the proposed action. If a person entitled to notice of proposed action makes a timely objection to the proposed action, it may be taken only under court supervision. See Chapter 4 (commencing with Section 10580) (notice of proposed action procedure). As to when notice of proposed action is required, see Article 2 (commencing with Section 10510) and Article 3 (commencing with Section 10530).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

Independent administration powers

Abandoning tangible personal property § 10563

Accepting deed in lieu of foreclosure or trustee's sale § 10565

Actions and proceedings

Compromising or settling § 10554

Instituting and defending § 10553

Annuity granted by will, purchasing § 10558

Borrowing § 10515

Business of decedent

Continuing § 10533

Incorporating § 10514

Selling § 10514

Claims against estate

Acting on § 10552

Compromising, settling, or releasing § 10554

Contracts

Decedent's contract to convey property § 10518

Making contracts generally § 10532

Conveying property to effectuate specific power § 10556

Determining decedent's claim to property held by another § 10519

Determining third-party claim § 10519

Disclaimer § 10520

Encumbering estate property § 10515

Exclusive right to sell property, granting or extending § 10537

Family allowance § 10534

Foreclosure of mortgage, accepting deed in lieu of § 10565

Investments

Manner provided by will § 10512

Securities § 10511

Leases § 10535

Management and control generally § 10531

Obligations, modifying terms of § 10555

Option, restricted, exercise of § 10559

Option to purchase, granting § 10516

Option to purchase given in will, conveyance pursuant to § 10517

Partnership in which decedent was general partner § 10533

Paying taxes, assessments, and other expenses § 10557

Personal property

Completing decedent's contract to convey property § 10518

Conveying property to effectuate specific power § 10556

Leases § 10535

Manner of sale generally § 10503

Repairs or alterations § 10564

Sale or exchange generally § 10536

Powers any personal representative may exercise without court supervision § 10551

Purchasing securities or commodities sold short § 10560

Real property

Accepting deed in lieu of foreclosure or trustee's sale § 10565

Alterations § 10564

Borrowing § 10515

Borrowing or encumbering, limited authority excludes power to §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Completing decedent's contract to convey property § 10518

Conveying property to effectuate specific power § 10556

Exchanges

Limited authority excludes power to make §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Power to make § 10513

Exclusive right to sell, granting or extending § 10537

Lease § 10535

Manner of sale generally § 10503

Option to purchase

Granting § 10516

Limited authority excludes power to grant §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Option to purchase in will, transfer to person given § 10517

Partial satisfaction of mortgage or partial reconveyance under trust deed § 10566

Repairs § 10564

Selling estate property

Limited authority excludes power to §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Power to sell § 10513

Repairs or alterations in property § 10564

Sale under deed of trust, acceptance of deed in lieu of § 10565

Securities

Holding in name of nominee or in other form § 10561

Listed, sale of § 10536

Over the counter, sale of § 10536

Sold short, purchase to complete contract § 10560

Surrender for redemption or conversion § 10536
Subscription or conversion rights, exercising § 10562
Taxes, paying § 10557
Third-party claims § 10519
Limited independent administration authority §§ 10403, 10450(b)(2),
10452(c), 10501(e)
Matters requiring court supervision § 10501
Powers excluded by will § 10502

§ 10503. Manner of sale of property under independent administration authority

10503. Subject to the limitations and requirements of this part, when the personal representative exercises the authority to sell property of the estate under this part, the personal representative may sell the property 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 the sale.

Comment. Section 10503 restates subdivision (a) of former 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. As to the omission of the phrase "the applicable fiduciary duties" which appeared in subdivision (a) of former Section 591.9, see the Comment to Section 10502.

The personal representative who has been granted only limited independent administration 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 10403, 10450(b)(2), and 10452(c) (limited independent administration authority). The decedent's will may restrict the exercise of the power to sell property. See Section 10502. See also the Comment to Section 10502. In addition, independent administration authority may not be used where estate property is proposed to be sold to the personal representative. See Section 10501.

Section 10503 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 made

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.

Section 10503 concerns the manner of sale of property when the personal representative exercises the power to sell property. The power to sell property is found in other provisions of this chapter. See Sections 10513 (real property) and 10536 (personal property). See also, Sections 10516 (granting option to purchase real property), 10517 (transferring to person given option to purchase in will), 10518 (completing contract of decedent to convey or transfer property), 10537 (exclusive right to sell property). The personal representative acts in a fiduciary capacity in exercising the powers granted by this part. See Sections 9600 and 10502 and the Comment to Section 10502.

Notice of proposed action under Chapter 4 (commencing with Section 10580) is required to sell or exchange real property (Section 10513) or to sell or exchange personal property except for certain kinds of property (Section 10536). Notice of proposed action also is required for selling the decedent's unincorporated business (Section 10514), granting an option to purchase real property (Section 10516), transferring to a person given an option to purchase in the decedent's will (Section 10517), completing a contract by decedent to convey property (Section 10518), or granting an extension of an exclusive right to sell property that will cause the entire period covered by the right to exceed 270 days (Section 10537).

The personal representative has the power to make any conveyance needed to effectuate the sale. See Section 10556.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

Limited independent administration authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

Article 2. Powers Exercisable Only After Giving Notice of Proposed Action

§ 10510. Article describes powers that may be exercised only after giving notice of proposed action

10510. The personal representative may exercise the powers described in this article only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied.

Comment. Section 10510 conditions the exercise of the powers described in this article: Those powers may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied.

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). See also Section 10502 (introductory clause) and the Comment to that section. 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).

The personal representative may not take certain actions under independent administration authority where there is a conflict of interest between the interest of the personal representative and the interest of the estate. See Section 10501 (personal representative cannot use independent administration procedure to sell property of the estate to the personal representative, to exchange estate property with the personal representative for other property, or to grant to the personal representative an option to purchase property of the estate). See the Comment to Section 10501.

A personal representative who has been granted only limited independent administration authority may not exercise independent administration authority with respect to matters not included within the scope of the authority granted. See Section 10502 and the Comment to that section. See also 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); Sections 10403, 10450(b)(2), and 10452(c) (limited independent administration authority); Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

The decedent's will may limit the powers of the personal representative under this part. See Section 10502 (introductory clause).

CROSS-REFERENCES

Definitions

Personal representative § 58

Exercise of powers § 10502

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

Matters requiring court supervision § 10501

§ 10511. Investing in securities

10511. 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 10511 restates a portion of subdivision (b) of former Section 591.6 (powers of personal representative) without

substantive change. Section 10511, together with Section 10512, continue the substantive effect of subdivision (b)(8) of former Section 591.3 (notice of proposed action required -- with certain specified exceptions -- for investing funds of the estate).

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10511 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

The exceptions under prior law to the requirement that notice of proposed action be given for investments of moneys of the estate are continued in substance in this part. Notice of proposed action is required for the investments described in Sections 10511 and 10512. See Section 10510. There is no requirement under this part that notice of proposed action be given for the investments that were listed as exceptions in subdivision (b)(8) of former Section 591.3. Under Section 10551, the personal representative 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). These investments may be made without giving notice of proposed action. See Section 10550. For a more limited authority to make investments in federal or state securities under supervised administration, see Section 9731. For authorization to exercise security subscription or conversion rights under independent administration authority, see Section 10562. See also 10561 (holding securities in name of nominee or in other form).

CROSS-REFERENCES

Definitions

Personal representative § 58
Security § 70

§ 10512. Investing money in manner provided by will

10512. The personal representative has the power to invest money of the estate in any manner provided by the will.

Comment Section 10512 restates the last portion of subdivision (b) of former Section 591.6 (powers of personal representative) without substantive change. For the comparable provision under supervised administration, see Section 9732.

Section 10512, together with Section 10511, continue the substantive effect of subdivision (b)(8) of former Section 591.3 (notice of proposed action required -- with certain specified exceptions -- for investing funds of the estate). See the Comment to Section 10511.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10512 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

As to other authorized investments for money of the estate, see Section 10511 and the Comment to that section.

CROSS-REFERENCES

Definitions

Personal representative § 58
Will § 88

§ 10513. Selling or exchanging real property

10513. The personal representative has the power to sell or exchange real property of the estate.

Comment. Section 10513 restates subdivision (a)(1) of former Section 591.3 without substantive change. Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10512 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. For a general provision concerning the manner of sale of real property under independent administration, see Section 10503. The personal representative has power to make any conveyance needed to effectuate the power granted by Section 10513. See Section 10556.

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 10403, 10450(b)(2), and 10452(c) (limited independent administration authority).

The personal representative may not use independent administration authority to sell property of the estate to the personal representative or to exchange estate property with the personal representative for other property. See Section 10501 and the Comment to that section.

CROSS-REFERENCES

Notice of proposed action required

Completing contract by decedent to convey property § 10518
Conveying property to person given option to purchase in will § 10517
Extending exclusive right to sell § 10537
Granting option to purchase § 10516
Sale of decedent's unincorporated business § 10514

Definitions

Personal representative § 58
Real property § 68

§ 10514. Selling or incorporating decedent's business

10514. The personal representative has the power to sell or incorporate any of the following:

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

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

Comment. Section 10514 restates the substance of the last portion of subdivision (b)(6) of former Section 591.3 without substantive change. Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10514 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. Real or personal property or both may be sold in connection with the sale of the decedent's business. For a general provision concerning the manner of sale of real property under independent administration, see Section 10503. The personal representative has power to make any conveyance needed to effectuate the power granted by Section 10514. See Section 10556. As to the power to continue the operation of the decedent's business, see Section 10533.

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 10403, 10450(b)(2), and 10452(c) (limited independent administration authority).

The personal representative may not use independent administration authority to sell property of the estate to the personal representative. See Section 10501 and the Comment to that section.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10515. Borrowing; encumbering estate property

10515. 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 10515 restates without substantive change subdivision (c) of former Section 591.6 (powers of personal representative) and subdivision (b)(10) of former Section 591.3 (notice of proposed action required). For provisions relating to supervised administration, see Sections 9800-9807.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10515 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

A personal representative who has been granted only limited independent administration authority may not borrow money secured by an encumbrance on real property of the estate using the independent administration procedure. See Section 10501(e) (limited authority

excludes power to borrow money secured by encumbrance on real property of the estate). See also Sections 10403, 10450(b)(2), and 10452(c) (limited independent administration authority).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 10516. Granting option to purchase real property

10516. 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 10516 restates without substantive change the last portion of subdivision (a) of former Section 591.6 (powers of personal representative) and subdivision (b)(2) of former Section 591.3 (notice of proposed action required). For the comparable provision under supervised administration, see Section 9960.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10516 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. See also Section 10503 (manner of sale of property under independent administration authority)

A personal representative who has been granted only limited independent administration authority may not grant an option to purchase real property of the estate using the independent administration procedure. See Section 10501(e) (limited authority excludes power to grant an option to purchase real property). See also Sections 10403, 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 and the Comment to that section.

CROSS-REFERENCES

Definitions

Personal representative § 58
Real property § 68

§ 10517. Transferring to person given option to purchase in will

10517. If the will gives a person the option to purchase real or personal property and the person has complied with the terms and conditions stated in the will, the personal representative has the power to convey or transfer the property to the person.

Comment. Section 10517 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 subdivision (a) of former Section 591.6. For the comparable provision under supervised administration, see Section 9980.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10517 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. The personal representative has power to make any conveyance needed to effectuate the power granted by Section 10517. See Section 10556. The personal representative has the specific power described in Section 10517 even though the personal representative has only limited independent administration authority.

CROSS-REFERENCES

Definitions

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

§ 10518. Completing contract of decedent to convey or transfer property

10518. The personal representative has the power to convey or transfer real or personal property to complete a contract entered into by the decedent to convey or transfer the property.

Comment. Section 10518 continues former Section 591.3(b)(9) without substantive change. For the comparable provision under supervised administration, see Section 9860.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10518 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. The personal representative has power to make any conveyance needed to effectuate the power granted by Section 10518. See Section 10556. The personal representative has the specific power described in Section 10518 even though the personal representative has only limited independent administration authority.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Real property § 68

§ 10519. Determining claims to property claimed to belong to decedent or other person

10519. 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 10519 continues former Section 591.3(b)(11) without substantive change. For the comparable provision under supervised administration, see Section 9860.

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10519 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510. Independent administration authority may not be used to compromise or settle a claim of the personal representative against the estate. See Section 10501 and the Comment to that section.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

§ 10520. Making a disclaimer

10520. The personal representative has the power to make a disclaimer.

Comment. Section 10520 restates subdivision (n) of former Section 591.6 (powers of personal representative) except that notice of proposed action was not required to exercise this power under former law. For the provisions relating to disclaimers, see Division 2.5 (commencing with Section 260).

Concerning the exercise of powers described in this article, see Sections 10502 and 10510 and the Comments to those sections. The power described in Section 10520 may be exercised only if the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) are satisfied. See Section 10510.

CROSS-REFERENCES

Definitions

Personal representative § 58

**Article 3. Powers the Exercise of Which Requires Giving of
Notice of Proposed Action Under Some Circumstances**

**§ 10530. Article describes powers that may in some circumstances be
exercised only after giving notice of proposed action**

10530. Except to the extent that this article otherwise provides, the personal representative may exercise the powers described in this article without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

Comment. The powers set out in this article are powers that under some circumstances may be exercised without giving notice of proposed action and in other circumstances may be exercised only if the notice of proposed action procedure requirements are satisfied. Section 10530 permits the exercise of powers described in this article without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580) except to the extent otherwise provided in this article.

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). See also Section 10502 (introductory clause) and the Comment to that section. 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).

Subdivision (b) of Section 10580 permits a personal representative to use the procedure provided in Chapter 4 (notice of proposed action procedure) with respect to an action that the personal representative proposes to take under a power granted by this article even though the action is not one for which notice of proposed action is required under this article. For example, the personal representative may want to proceed under Chapter 4 where the proposed action is the entering into of a contract that will be fully performed within two years. Entering into such a contract ordinarily does not require notice of proposed action. See Section 10532. Or, for example, the personal representative may want to proceed under Chapter 4 where the proposed action is the entering into a lease of real property for a term not in excess of one year. This action does not require notice of proposed action. See Section 10535(b). If the procedure provided by Chapter 4 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 10589(b) and the Comment to that section.

The personal representative may not take certain actions under independent administration authority where there is a potential for conflict of interest between the interest of the personal representative and the interest of the estate. See Section 10501 and the Comment to that section.

The decedent's will may limit the powers of the personal representative under this part. See Section 10502.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10531. Managing and controlling estate property generally

10531. (a) The personal representative has the power to manage and control property of the estate. Except as provided in subdivision (b), the personal representative may exercise this power without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in any case where the provision of this chapter governing the exercise of a specific power so requires.

Comment. The first sentence of Section 10531 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 second sentence of subdivision (a) and subdivision (b) of Section 10531 are new provisions that make clear that the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) must be satisfied where a provision governing the exercise of a specific power so requires.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

The provision of subdivision (a) of former Section 591.6 relating to "exchanges" is superseded by Sections 10513 (real property) and 10536 (personal property).

The portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to "convey" property is superseded by various provisions of this chapter which give the personal representative the power to take particular actions that may involve a conveyance and by Section 10556 which makes clear that the personal representative has power to execute conveyances in connection with specific transactions that may require the execution of a conveyance. Under this chapter, 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, Section 10556 makes clear that 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 10531 is unnecessary in view of Section 10553 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.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Limited independent administration authority §§ 10403, 10450(b)(2), 10452(c), 10501(e)

§ 10532. Entering into contracts

10532. (a) The personal representative has the power to enter into a contract in order to carry out the exercise of a specific power granted by this part, including but not limited to the powers granted by Sections 10531 and 10551. Except as provided in subdivision (b), the personal representative may exercise this power without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the contract is one that by its provisions (1) cannot be terminated by the personal representative within two years and (2) is not to be fully performed within two years.

(c) Nothing in this section excuses compliance with the requirements of Chapter 4 (commencing with Section 10580) when the contract is made to carry out the exercise of a specific power and the provision that grants that power requires compliance with Chapter 4 (commencing with Section 10580) for the exercise of the power.

Comment. Subdivisions (a) and (b) of Section 10532 restate subdivision (b)(5) of former Section 591.3 with two revisions:

(1) A new provision -- that the contract is one that cannot be terminated by the personal representative within two years -- is added in subdivision (b). This provision makes clear that notice of proposed action is not required by Section 10532 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 subdivision (b) to make clear that the requirement that the contract be one that will be performed within two years is satisfied only if the contract is one that will be "fully" performed within two years.

Subdivision (c) of Section 10532 is a new provision that makes clear that the power to make a contract under Section 10532 does not excuse compliance with a provision of another section governing the exercise of a specific power which requires compliance with Chapter 4 (commencing with Section 10580), even though a contract may be made to implement the specific power granted by the other section.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

Where a contract is made to effectuate an independent administration power, the requirements of Chapter 4 (commencing with Section 10580) (notice of proposed action procedure) must be satisfied if the contract fits the description of subdivision (b) of Section 10532. For example, the power to lease personal property of the estate under independent administration authority is governed by the limitation of subdivision (b) of Section 10532. See Section 10535(c). But the power to lease real property of the estate under independent administration authority is subject to a more stringent requirement concerning giving of notice of proposed action (see subdivision (b) of Section 10535), and subdivision (c) of Section 10532 makes clear that this more stringent requirement must be satisfied.

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 10531. Other specific powers granted in this chapter -- including the powers granted by Section 10551 (powers that any personal representative may exercise without court supervision) -- by implication include the power to make a contract where necessary to effectuate the specific power granted. For example, the personal representative is authorized by Section 10551 to purchase insurance on estate property, and Section 10532 requires that notice of proposed action be given if the insurance contract is one described in subdivision (b) of Section 10532.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10533. Continuing operation of decedent's business

10533. (a) Subject to the provisions of the Uniform Partnership Act, the personal representative has the power to continue as a general partner in any partnership in which the decedent was a general partner at the time of death.

(b) The personal representative has the power to continue operation 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.

(c) Except as provided in subdivision (d), the personal representative may exercise the powers described in subdivisions (a) and (b) without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

(d) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) if the personal representative continues as a general partner under subdivision (a), or continues the operation of any unincorporated business or venture under subdivision (b), for a period of more than six months from the date of appointment of the personal representative.

Comment. Section 10533 restates the substance of subdivision (1) of former Section 591.6 (powers of personal representative) and the first portion of subdivision (b)(6) of former Section 591.3 (notice of proposed action). The former provisions 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 10533 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.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

Although notice 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 has the option of giving notice of proposed action if the personal representative plans to continue the business during this period. See Section 10580(b). If notice of proposed action is given, a 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 the Comment to Section 10530.

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 former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10502 recognizes that the personal representative is required to exercise a power granted under this chapter 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). See also the Comment to Section 10502.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10534. Paying family allowance

10534. (a) The personal representative has the power to pay a reasonable family allowance. Except as provided in subdivision (b), the personal representative may exercise this power without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) for all of the following:

- (1) Making the first payment of a family allowance.
- (2) Making the first payment of a family allowance for a period commencing more than 12 months after the death of the decedent.
- (3) Making any increase in the amount of the payment of a family allowance.

Comment. The first sentence of subdivision (a) of Section 10534 restates subdivision (m) of former Section 591.6 (powers of personal representative) without substantive change. The second sentence of subdivision (a) and subdivision (b) of Section 10534 restate subdivision (b)(7) of former Section 591.3 (notice of proposed action required under some circumstances) without substantive change.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For provisions relating to payment of the family allowance, see Sections 6540-6545.

Although notice 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 notice of proposed action, except that another notice of proposed action is required if the family allowance is to be continued for a period commencing more than 12 months after the death of the decedent. Notice of proposed action also must be given if there is to be an increase in the amount of the payment of a family allowance. Notice 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 notice of proposed action previously has been given with reference to the payment of a family allowance to another person.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10535. Leasing real and personal property

10535. (a) 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 unitization agreement) for such period, within or beyond the period of administration, and for such rental or royalty or both, and upon such other terms and conditions as the personal representative may determine. Except as provided in subdivisions (b) and (c), the personal representative may exercise this power without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

(b) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of real property for a term in excess of one year. If the lease gives the lessee the right to extend the term of the lease, the lease shall be considered as if the right to extend had been exercised.

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative enters into a lease of personal property and the lease is one described in subdivision (b) of Section 10532.

Comment. Subdivision (a) of Section 10535 supersedes the portion of subdivision (a) of former Section 591.6 relating to leases. The first sentence of subdivision (a) of Section 10535 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

The second sentence of subdivision (a) and subdivision (b) of Section 10535 restate subdivision (b)(4) of former Section 591.3 with the addition of a provision dealing specifically with a lease that gives the lessee the option to extend the term of the lease. If the lease gives the lessee the option to extend the lease beyond the one-year term, notice of proposed action is required. The option to extend is taken into account in determining the term of the lease for the purpose of subdivision (b). This is consistent with the rule governing personal property leases under supervised administration. See Section 9940 (lease of personal property for term exceeding one-year).

Subdivision (c) of Section 10535 is a new provision that is consistent with prior law. Under prior law, a lease of personal property was governed by subdivision (b)(5) of former Section 591.3. (contracts other than leases of real property), the substance of which is continued in subdivision (b) of Section 10532.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

COMPARABLE PROVISIONS

Supervised administration §§ 9940-9948

Trusts §§ 16231, 16232

§ 10536. Selling or exchanging personal property

10536. (a) The personal representative has the power to sell personal property of the estate or to exchange personal property of the estate for other property upon such terms and conditions as the personal representative may determine. Except as provided in subdivision (b), the personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) in exercising this power.

(b) The personal representative may exercise the power granted by subdivision (a) without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580) in case of 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 10536 supersedes portions of subdivisions (a) and (g) of former Section 591.6 which related to sales or exchanges of personal property (powers of personal representative) and all of subdivision (b)(3) of former Section 591.3 (notice of proposed action). For the comparable provision under supervised administration, see Section 9920.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For a general provision concerning the power to sell property under independent administration, see Section 10503. Independent administration authority may not be used for the sale of property to the personal representative or the exchange with the personal representative of property of the estate for other property. See Section 10501.

Subdivision (a) of Section 10536 continues the general requirement of subdivision (b)(3) of former Section 591.3 that notice of proposed action be given for the sale or exchange of personal property. Exceptions to this requirement are set forth in subdivision (b) of Section 10536. See also Section 10514 (notice of proposed action required for sale of decedent's unincorporated business).

Paragraph (1) of subdivision (b) of Section 10536 restates without substantive change an exception found in subdivision (b)(3) of former 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 10536, 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 other newspapers. For the comparable provision relating to supervised administration, see Section 10200.

Paragraph (3) of subdivision (b) of Section 10536 supersedes the exception found in subdivision (b)(3) of former 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 10536 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 in paragraph (3) of subdivision (b) of Section 10536 makes clear that notice of proposed action is not required to sell security subscription or conversion rights when sold for cash. If rights will be sold but will not be sold for cash, Section 10536 requires that notice of proposed action be given. 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. As to the exercise of a security subscription or conversion right under independent administration authority, see Section 10562 (notice of proposed action not required).

Paragraph (4) of subdivision (b) of Section 10536 is new. This paragraph makes clear that a security described in Section 10200 may be surrendered for redemption or conversion without giving notice of proposed action. Section 10200 governs the surrender of securities for redemption or conversion.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Security § 70

Sale of decedent's business § 10514

§ 10537. Granting or extending exclusive right to sell property

10537. (a) The personal representative has the following powers:

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

(2) 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.

(b) Except as provided in subdivision (c), the personal representative may exercise the powers described in subdivision (a) without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

(c) The personal representative shall comply with the requirements of Chapter 4 (commencing with Section 10580) where the personal representative grants an extension of an exclusive right to sell property and the period of the extension, together with the periods of the original exclusive right to sell the property and any previous extensions of that right, is more than 270 days.

Comment. Paragraph (1) of subdivision (a) of Section 10537 restates subdivision (o) of former Section 591.6 without substantive change. Paragraph (2) of subdivision (a) 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 10537 to the supervised administration provision found in Section 10150(c). Subdivisions (b) and (c) of Section 10537 are new provisions.

Concerning the exercise of powers described in this article, see Sections 10502 and 10530 and the Comments to those sections. See also Section 10501 (matters requiring court supervision notwithstanding grant of independent administration authority). For a general provision governing the manner of sale of property, see Section 10503. 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 10513 and 10536.

Although notice of proposed action is not required in order to grant an exclusive right to sell property or to extent the exclusive right to sell so long as the total period does not exceed 270 days, the personal representative may give notice of proposed action if the personal representative so desires. See Section 10580(a).

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. See Sections 10501(e) (personal representative granted only limited independent administration authority does not have power to sell real property using independent administration procedure). See also Sections 10403, 10450(b)(2), and 10452(c) (limited independent administration authority).

The phrase "where necessary and advantageous to the estate" which was found in subdivision (o) of former Section 591.6 has been omitted as unnecessary. The introductory clause of Section 10502 recognizes that 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). See also the Comment to Section 10502.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Article 4. Powers Exercisable Without Giving Notice of Proposed Action

§ 10550. Article describes powers that may be exercised without giving notice of proposed action

10550. The personal representative may exercise the powers described in this article without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580).

Comment. Section 10550 permits the exercise of the powers described in this article without the need to give notice of proposed action under Chapter 4 (commencing with Section 10580). However, subdivision (b) of Section 10580 permits a personal representative to use the procedure provided in Chapter 4 with respect to an action that the personal representative proposes to take even though the action is not one for which notice of proposed action is required. For example, the personal representative may want to proceed under Chapter 4 where the proposed action is the compromise of a claim by or against the estate (see Section 10554). This action is one that ordinarily does not require notice of proposed action. See Section 10550. If the procedure provided by Chapter 4 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 10589(b) and the Comment to that section. Use of the notice 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 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). See also the Comment to Section 10502. 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).

The decedent's will may limit the powers of the personal representative under this part. See Section 10502.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10551. Powers that any personal representative may exercise without court supervision

10551. In addition to the powers granted to the personal representative by other sections of this chapter, 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 10551 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 Section 591.6.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections.

Notice of proposed action is not required to exercise the power granted by Section 10551. See Section 10550. But the personal

representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

The inclusion of Section 10551 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 Section 591.6 are not specifically listed in this article. Accordingly, the following powers specifically listed in former 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 10551 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.

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

§ 10552. Acting on claims against estate

10552. The personal representative has the power to allow, pay, reject, contest, or compromise any claim against the estate.

Comment. Section 10552 restates without substantive change the portion of subdivision (j) of former Section 591.6 relating to claims against the estate. For provisions relating to claims, see Chapter 12 of Division 3 (commencing with Section 700).

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. As to the payment of taxes, assessments, and other expenses incurred in the collection, care, and administration of the estate, see Section 10557.

Notice of proposed action is not required to exercise the power granted by Section 10552. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550. 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), 10519 (notice 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).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10553. Instituting and defending actions and proceedings

10553. 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 10553 restates without substantive change the portion of subdivision (j) of former Section 591.6 which authorized the personal representative to "institute" and "defend" actions and proceedings. The language used in Section 10553 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 chapter, see Sections 10502 and 10550 and the Comments to those sections.

Notice of proposed action is not required to exercise the power granted by Section 10553. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

Notice 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 10519.

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

§ 10554. Compromising or settling claim, action, or proceeding

10554. 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 10554 supersedes a portion of subdivision (j) of former 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. The words "by compromise," which appeared at the end of the first clause of subdivision (j) of former Section 591.6, are omitted at the end of the first clause of subdivision (k) of Section 10502 because these words are as unnecessary and their omission does not make a substantive change in the meaning of the provision.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections.

Notice of proposed action is not required to exercise the power granted by Section 10554. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

Notice 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 10519.

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

Note. Team 4 believes that subdivision (b) should be restated as follows:

(b) The power to release, in whole or in part, any claim belonging to the estate to the extent that the estimated costs of collection exceed the amount of the claim."

The staff believes that the language set out above is not the same as the personal representative determining not to resort to legal action or other means to collect a claim because the cost of collection will likely exceed the amount to be collected. Where a release is being given, the personal representative is taking action, rather than declining to act. Subdivision (b), which continues existing language, may be intended only to cover technical claims that are uncollectible because there is no merit to the claim.,. On the other hand, maybe subdivision (b) should be restated to read:

(b) The power to release, in whole or in part, any claim belonging to the estate to the extent that the estimated costs of collection are likely to exceed the amount that could be collected on the claim.

The language set out above is consistent with the power to compromise or settle a claim which is given by subdivision (a) of Section 10554.

§ 10555. Modifying terms of obligation

10555. 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 10555 is a new provision. For the comparable provision under supervised administration, see Section 9830(a)(2).

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10555. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

The power granted by Section 10555 is not limited to modifying the terms of an indebtedness owing to the decedent or the estate. It extends to the modification of the terms of an obligation as well. For example, if the lessee has an obligation (not involving the payment of money) to the estate under the terms of a lease (such as a requirement as to the hours of business of the lessee), Section 10555 authorizes the personal representative to modify that term of the lease, it being one of the terms of the obligation running in favor of the estate.

Independent administration authority may not be used 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. Notwithstanding grant of independent administration authority, the personal representative is required to obtain court supervision for allowance of commissions of personal representative and allowance of attorney's fees. See Section 10501.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10556. Conveying property to effectuate a specific power

10556. The personal representative has the power to convey or transfer property in order to carry out the exercise of a specific power granted by this part.

Comment. Section 10556 supersedes the portion of subdivision (a) of former Section 591.6 that gave the personal representative the power to "convey" property. See the discussion in the Comment to Section 10531 concerning that portion of former Section 591.6.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Under this part, 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 (and complies with the notice of proposed action procedure if notice of proposed action is required), Section 10556 gives the personal representative power to execute any conveyance that is necessary to effectuate the exercise of the specific power without the need to give notice of proposed action with respect to the execution of the conveyance.

Although notice of proposed action is not required to exercise the power granted by Section 10556 (See Section 10550), the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10557. Paying taxes, assessments, and expenses

10557. 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 10557 restates subdivision (k) of former Section 591.6 without substantive change. As to the payment of claims against the estate, see Section 10552. See also Section 10554 (compromise or settling claim against decedent, personal representative, or estate. For provisions relating to payment of debts, expenses, and charges, see Sections 950-980.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10557. See Section 10550. 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). Although notice of proposed action is not required to exercise the power described in Section 10557, the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10558. Purchasing annuity granted in will

10558. 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 10558 is a new provision. For the comparable provision under supervised administration, see Section 9733.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10558. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Devisee § 34

Personal representative § 58

Will § 88

Note. Team 4 suggests that Section 10558 be restated to read:

10558. The personal representative has the power to purchase from an insurer, admitted to do business in this state, an annuity payable to a devisee named in the will.

The staff does not believe that this language is as clear as the language of the draft section. The draft section permits purchase only of "an annuity expressly granted by the will to a devisee named in the will." This language is taken from the comparable provision governing supervised administration which is drawn from existing Probate Code Section 584 which authorizes "the purchase from an insurer admitted to do business in this state and for any legatee named in the will of an annuity expressly granted to him by said will." The word "expressly" could be omitted from the draft section as unnecessary and undesirable; either the will grants the annuity or it does not.

§ 10559. Exercising restricted option

10559. 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 10559 is a new provision. For the comparable provision under supervised administration, see Section 9734. See also

Section 10562 (exercising security subscription or conversion right under independent administration authority).

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10559. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Team 4 suggests that the limiting phrase "and is nontransferrable except by testate or intestate succession from the decedent" be omitted from Section 10559. The staff recommends that this suggestion be adopted by the Commission. If it is, the comparable provision relating to supervised administration should be reviewed to determine if it should be conformed.

§ 10560. Purchasing securities or commodities sold short

10560. 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 10560 is a new provision. For the comparable provision under supervised administration, see Section 9735.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10560. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Security § 70

§ 10561. Holding securities in name of nominee or in other form

10561. 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 10561 restates subdivision (h) of former Section 591.6 without substantive change. For the comparable provision under supervised administration, see Section [XXXX (to be drafted)].

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections.. Notice of proposed action is not required to exercise the power granted by Section 10561. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Security § 70

COMPARABLE PROVISIONS

Supervised administration §

Trusts § 16238

Note. Team 4 suggests that the provision relating to liability at the end of Section 10561 be omitted. The staff recommends that this suggestion be adopted and the following added to the Comment to Section 10561:

Section 10561 does not continue the provision of former Section 591.6 that made the personal representative "liable for any act of the nominee in connection with the security so held." The liability of the personal representative is now determined under Section 9600 which request the personal representative to use ordinary care and diligence in managing and controlling the estate and not to exercise a power to the extent that ordinary care and diligence requires that the power not be exercised. See Section 9600 and the Comment to that Section. See also Section 10502 and the Comment to that section.

§ 10562. Exercising security subscription or conversion rights

10562. The personal representative has the power to exercise security subscription or conversion rights.

Comment. Section 10562 restates the substance the portion of subdivision (g) of former Section 591.6 that related to the exercise of subscription or conversion rights with the expansion of the scope of the provision to cover "securities" instead of "stock". See Section 70 (defining "security"). There is no provision in supervised administration for the exercise of security subscription or conversion rights. As to the sale under independent administration authority of security subscription or conversion rights, see Section 10536 (notice of proposed action not required if sold for cash).

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10562. See Section 10550. But the personal representative may

use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58
Security § 70

§ 10563. Abandoning tangible personal property

10563. The personal representative has 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 10563 supersedes subdivision (d) of former Section 591.6. Section 10563 uses language drawn from the provision governing supervised administration. See Sections 9780-9789.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10563. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

Section 10563 applies only to tangible personal property. As to the power with respect to real property and intangible personal property, see Sections 10552 (allowing, paying, rejecting, contesting, or compromising claim against estate), 10553 (instituting and defending actions and proceedings), 10554 (compromising or settling claim, action, or proceeding).

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 10564. Making repairs and improvements

10564. The personal representative has the power to make repairs and improvements to real and personal property of the estate.

Comment. Section 10564 restates subdivision (e) of former Section 591.6 without substantive change. The phrase "repairs and improvements to real and personal property of the estate" has been substituted in Section 10564 for the language "make ordinary and extraordinary repairs or alterations in buildings or other property" which was used in former Section 591.6. The language "ordinary and extraordinary" has been omitted. Whether a repair or improvement should or should not be made does not depend on whether it is ordinary or extraordinary. The personal representative is required to exercise a power 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). See also the Comment to Section 10502.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10564. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10565. Accepting deed in lieu of foreclosure or trustee's sale

10565. 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 10565 is a new provision. For the comparable provision under supervised administration, see Section 9850.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10565. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 10566. Giving partial satisfaction of mortgage or partial reconveyance under trust deed

10566. 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 deed of trust held by the estate.

Comment. Section 10566 is a new provision. For the comparable provision under supervised administration, see Section 9851.

Concerning the exercise of powers described in this chapter, see Sections 10502 and 10550 and the Comments to those sections. Notice of proposed action is not required to exercise the power granted by Section 10566. See Section 10550. But the personal representative may use the notice of proposed action procedure if the personal

representative so desires. See Section 10580(b) and the Comment to Section 10550.

CROSS-REFERENCES

Definitions

Personal representative § 58

CHAPTER 4. NOTICE OF PROPOSED ACTION PROCEDURE

Article 1. Notice of Proposed Action Procedure

§ 10580. When notice of proposed action required or permitted

10580. (a) A personal representative who has been granted authority to administer the estate under this part shall give notice of proposed action as provided in this article prior to the taking of the proposed action without court supervision if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action so requires. 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 notice of proposed action as provided in this article even if the provision of Chapter 3 (commencing with Section 10500) giving the personal representative the power to take the action permits the personal representative to take the action without giving notice of proposed action. Nothing in this subdivision requires the personal representative to give notice 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 Section 591.3 without substantive change except that a reference to Chapter 3 (commencing with Section 10500) has been substituted for the reference to subdivision (b) of former Section 591.3. Chapter 3 supersedes subdivision (b) of former Section 591.3.

The second sentence of subdivision (a) is a new provision that makes no substantive change in prior law. The sentence makes clear that if the personal representative has only limited independent administration authority, the mere fact that the power is listed in

Chapter 3 (commencing with Section 10500) gives the personal representative no right or authority to exercise the power using the procedure provided in this chapter. See Section 10403 (limited independent administration 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 independent administration 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 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. See Sections 10501 and 10502 and the Comments to those sections.

Subdivision (b) of Section 10580 is a new provision that permits a personal representative to use the notice of proposed action 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 notice of proposed action is required. For example, the personal representative may want to proceed under subdivision (b) of Section 10580 where the proposed action is the compromise of a claim against the estate (see Section 10552). This action is one that ordinarily does not require notice of proposed action. See the Comment to Section 10550. 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 10589(b) and the Comment to that section. Use of the notice 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

§ 10581. Persons to whom notice must be given

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

(a) Each known 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.

Chapter 3 (commencing with Section 10500) gives the personal representative no right or authority to exercise the power using the procedure provided in this chapter. See Section 10403 (limited independent administration 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 independent administration 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 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. See Sections 10501 and 10502 and the Comments to those sections.

Subdivision (b) of Section 10580 is a new provision that permits a personal representative to use the notice of proposed action 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 notice of proposed action is required. For example, the personal representative may want to proceed under subdivision (b) of Section 10580 where the proposed action is the compromise of a claim against the estate (see Section 10552). This action is one that ordinarily does not require notice of proposed action. See the Comment to Section 10550. 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 10589(b) and the Comment to that section. Use of the notice 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.

GROSS-REFERENCES

Definitions

Personal representative § 58

§ 10581. Persons to whom notice must be given

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

(a) Each known 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 Section 591.3 with two substitutions:

(1) In subdivision (a), "Each known devisee" is substituted for "the devisees and legatees." See Section 34 (defining "devisee").

(2) In subdivision (b), "Each known heir" is substituted for "the heirs."

As to giving notice to known heirs and known devisees, see Section XXXXXX.

CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Devisee § 34

Heirs § 44

Person § 56

Notice to known heirs and devisees § XXXXX

Waiver of right to receive notice of proposed action § 10583

Note. Team 4 suggests that Section 10581 be revised to require notice only to those affected by the proposed action.

§ 10582. Consent to proposed action

10582. Notice 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 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 notice of proposed action be allowed a specified period of time -- see Section 10586(b) and (c), Section 10587(b), and Section 10588(b) -- within which to object to the proposed action. Concerning revocation of a consent, see Section 10584.

CROSS-REFERENCES

Definitions

Person § 56

Revocation of consent § 10584

§ 10583. Waiver of notice

10583. (a) Notice of proposed action need not be given to any person who, in writing, waives the right to notice 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 notice, such as the delivery, mailing, or time requirements of Section 10586, or the giving of the notice in its entirety for the particular proposed action.

(b) Notice of proposed action need not be given to any person who has executed a Statutory Waiver of Notice 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 notice of proposed action.

(2) A waiver of the right to notice of proposed action for all transactions of a type which includes the particular proposed action.

Comment. Subdivision (a) of Section 10583 restates subdivision (d) of former Section 591.3 without substantive change. The subdivision permits waiver of notice of proposed action only with respect to a particular proposed action. A person entitled to notice 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 notice of proposed action with respect to investing funds of the estate and borrowing money without waiving the right to notice of proposed action with respect to sales of real property. Or the person could waive the right to receive notice 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 10502 and the Comment to that section. Concerning revocation of a waiver, see Section 10584.

CROSS-REFERENCES

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 Notice 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 Notice 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 Notice of Proposed Action Form § 10600

Waiver of notice of proposed action § 10583

§ 10585. Form and contents of notice of proposed action

10585. (a) The notice of proposed action shall state all of the following:

(1) The name and mailing address of the personal representative.

(2) The person and telephone number to call to get additional information.

(3) The action proposed to be taken, with a reasonably specific description of the action. Where the proposed action involves the sale or exchange of real property, or the granting of an option to purchase real property, the notice of proposed action shall state the material terms of the transaction, including, if applicable, the sale price and the amount of, or method of calculating, any commission or compensation paid or to be paid to an agent or broker in connection with the transaction.

(4) The date on or after which the proposed action is to be taken.

(b) The notice of proposed action may be given using the most current form prescribed by the Judicial Council for Notice of Proposed Action.

(c) If the most current form prescribed by the Judicial Council is not used to give notice of proposed action, the notice of proposed action shall satisfy all of the following requirements:

(1) The notice of proposed action shall be in substantially the same form as the form prescribed by the Judicial Council.

(2) The notice of proposed action shall contain the statements described in subdivision (a).

(3) The notice of proposed action shall contain a form for objecting to the proposed action in substantially the form set out in the Judicial Council form.

Comment. Section 10585 continues the substance of the second, third, and fifth sentences of former Section 591.4 and supersedes former Section 591.8. Section 10585 makes no change in existing practice, but substitutes subdivision (c) of Section 10585 for the statutory form set out in former Section 591.8 which was superseded by the Judicial Council form.

CROSS-REFERENCES

Definitions

Real property § 68

Time for mailing or delivery § 10586

Note. The subcommittee decided to make use of the Judicial Council form mandatory. Team 4 and Mr. Collier object to requiring use of the Judicial Council form. To meet this objection, the staff has made use of the Judicial Council form optional and has added subdivision (c) to Section 10585 to permit use of a form that is substantially the same as the form prescribed by the Judicial Council. Note that the form used must contain a portion that can be completed and returned if the person receiving the notice of proposed action wants to object to the proposed action.

§ 10586. Delivery or mailing of notice

10586. (a) The notice of proposed action shall be delivered personally to each person required to be given notice of proposed action or be sent by first-class mail to the person at the person's last-known address. If the notice of proposed action is mailed to a person who resides outside the United States, it shall be sent by air mail.

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

(c) If the notice 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 notice 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 Section 591.4 without substantive change. Subdivisions (b) and (c) restate the fourth sentence of former Section 591.4 without substantive change.

CROSS-REFERENCES

Consent to proposed action § 10582

Definitions

Person § 56

Waiver of notice of proposed action § 10583

§ 10587. Delivery or mailing of objection to proposed action

10587. (a) Any person entitled to notice of proposed action under Section 10581 may object to the proposed action as provided in this section.

(b) The objection to the proposed action is made by delivering or mailing a written objection to the proposed action to the personal representative at the address stated in the notice of proposed action. The person objecting to the proposed action either may use the Judicial Council form or may make the objection in any other writing that identifies the proposed action with reasonable certainty and indicates that the person objects to the taking of the proposed action.

(c) The personal representative is deemed to have notice of the objection to the proposed action if it is delivered or received at the address stated in the notice of proposed action before whichever of the following times is the later:

(1) The date specified in the notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

Comment. Section 10587 restates subdivision (a)(2) of former Section 591.5 without substantive change. The second sentence of subdivision (b) is drawn from the last sentence of former Section 591.8.

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

Subdivision (a) of Section 10587 permits a person not given notice of proposed action to object to the proposed action. For example, the personal representative may for some reason fail to give notice of proposed action to a person entitled to the notice. The person may be informed of the proposed action by a relative who did receive a notice of proposed action. If the person entitled to the notice objects to the proposed action, the proposed action can be taken only under court supervision. See Section 10589. However, the person is not required to object to the proposed action in order to protect the right to have the court later review the action. Since the person was not given notice of proposed action, the person's right to have the court later review the proposed action is not affected. See Section 10590.

As an alternative to or in addition to objecting to the proposed action, a person who wants to prevent the proposed action from being taken other than under court supervision may apply for a restraining order under Section 10588.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Effect of failure to object § 10590

Effect of objection § 10589

Restraining order § 10588

§ 10588. Restraining order

10588. (a) If the proposed action would require court supervision if the personal representative had not been granted authority to administer the estate under this part, any person entitled to notice of proposed action under Section 10581 may apply to

the court having jurisdiction over the proceeding 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.

(b) The personal representative is deemed to have notice of the restraining order if it is served 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, before whichever of the following times is the later:

(1) The date specified in a notice of proposed action on or after which the proposed action is to be taken.

(2) The date the proposed action is actually taken.

Comment. Section 10588 restates subdivision (a)(1) of former Section 591.5 without substantive change except that Section 10588 makes clear the time within which the order must be served on the personal representative.

Section 10588 applies only where the proposed action is one that would require court supervision if the personal representative had not been granted authority to administer the estate under the Independent Administration of Estates Act. If notice of proposed action is given for an action that could be taken without court supervision even if independent administration authority had not been granted, the person who objects may deliver or mail an objection as provided in Section 10587.

CROSS-REFERENCES

Definitions

Court supervision § 10401

Person § 56

Personal representative § 58

Effect of restraining order § 10589

Note. Section 10588 covers only the situation where the personal representative has given notice of proposed action, whether or not the person seeking the restraining order has been given notice of proposed action. The restraining order is issued without cause being shown because the person could also object and prevent the proposed action being taken under independent administration authority. If a person fears that the personal representative might act under independent administration authority and the person does not want the action taken under independent administration authority, the person must seek to have the independent administration authority revoked. It would be possible to add a provision permitting a restraining order that would apply to a particular action that might be taken under independent administration authority, even if that action is not one that the personal representative proposes to take. However, to add such a provision would complicate the statute, and the staff recommends against it.

§ 10589. Court supervision and notice of hearing required if personal representative has notice of objection

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 notice 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.

Comment. Subdivision (a) of Section 10589 continues the first sentence of subdivision (b) of former Section 591.5 without substantive change. Subdivision (b) is new. Subdivision (c) restates subdivision (e) of former Section 591.5 without substantive change.

Where notice 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 the decedent's 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 notice of proposed action with respect to a proposed action that could be taken without giving notice of proposed action. The personal representative may give notice of proposed action (although not required to do so) in order that the person receiving the notice will waive the right to object to the proposed action if the person fails to object within the time allowed after receipt of the notice. See Section 10590.

Subdivision (a) of Section 10589 applies not only to a case where notice of proposed action is required but also to a case where notice 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 notice 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 notice 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. 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).

CROSS-REFERENCES

Definitions

Court supervision § 10401

Personal representative § 58

§ 10590. Effect of failure to object to proposed action

10590. (a) Except as provided in subdivisions (b) and (c), a person who has been given notice of a proposed action, as provided in

Sections 10580 to 10586, inclusive, and who has failed to object as provided in subdivision (d) 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.

(b) Subject to Sections 10582 to 10584, inclusive, the court may review the action taken upon motion of any interested person who establishes that he or she did not actually receive the notice of proposed action before the time to object under subdivision (d) expired.

(c) The court may review the action of the personal representative on its own motion where necessary to protect the interests of an heir or devisee who establishes all of the following:

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

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

(3) The guardian, conservator, or other personal representative did not waive notice of proposed action.

(4) The guardian, conservator, or other personal representative did not consent to the proposed action.

(d) For the purposes of this section, an objection to a proposed action is made only by one or both of the following methods:

(1) Delivering or mailing a written objection as provided in Section 10587 within the time specified in subdivision (b) of that section.

(2) Serving a restraining order obtained under Section 10588 in the manner prescribed and within the time specified in subdivision (b) of that section.

Comment. Section 10590 does not apply unless the person seeking review (or the person's guardian, conservator, or other personal representative) was given notice of proposed action as provided in Sections 10580-10586. See Sections 10585 (contents of notice), 10586 (delivery or mailing required). The notice must include 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.

Subdivisions (a) and (b) of Section 10590 restate the substance of the second sentence and a portion of the third sentence of subdivision (d) of former Section 591.5.

Subdivision (c) of Section 10590 supersedes the portion of the third sentence of subdivision (d) of former Section 591.5 which permitted the court to review the proposed action on its own motion. Subdivision (c) 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 having capacity who failed to object to the action to obtain court review, see subdivision (b).

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 notice 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 notice of proposed action lacks the capacity to act with respect to the proposed action.

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

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

§ 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 Section 591.4 and subdivision (c) of former Section 591.5 without substantive change.

CROSS-REFERENCES

Definitions

- Person § 56
- Personal representative § 58
- Property § 62

§ 10592. Failure of personal representative satisfy statutory requirements grounds for removal from office

10592. It is grounds for removal of the personal representative from office if the personal representative does either or both of the following:

(a) Fails to give notice of proposed action as required by this chapter.

(b) Takes a proposed action in violation of the provisions of Section 10589.

Comment. Section 10589 is drawn from the last sentence of subdivision (b) of former Section 591.5. Section 10589 expands the provision of former law to permit removal from office for failure to give notice of proposed action as required by this chapter. The court has discretion whether to remove the personal representative. In determining whether to remove the personal representative, the court should consider all the circumstances of the particular case. Among the significant considerations are whether the personal representative violated the statute with the intent to deprive the person entitled to notice of his or her rights or whether the failure was inadvertent or merely negligent.

CROSS-REFERENCES

Definitions

- Personal representative § 58

Article 2. Statutory Form for Waiver of Notice of Proposed Action

§ 10600. Statutory Waiver of Notice of Proposed Action Form

10600. (a) The Judicial Council may prescribe a Statutory Waiver of Notice 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 Notice of Proposed Action Form shall be in substantially the form set out in this subdivision and shall include the warning set out in this subdivision, either typed in all capital letters or printed in not less than 10-point bold-face type or a reasonable equivalent thereof:

STATUTORY WAIVER OF PROPOSED ACTION FORM
(With Cancellation of Waiver Provision)
(California Probate Code Section 10600)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _____

Estate of _____

No. _____

(deceased)

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 receive prior notice of (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. See Section 10584.

CROSS-REFERENCES

Definitions

Personal representative § 58
Revocation of waiver § 10584
Waiver of notice of proposed action § 10583

APPENDIX

DISPOSITION OF REPEALED INDEPENDENT ADMINISTRATION SECTIONS

Probate Code § 591 (repealed), Short title

Comment. Former Section 591 is continued without substantive change in Section 10400.

Probate Code § 591.1 (repealed), Petition for independent administration authority

Comment. The first sentence of subdivision (a) of former Section 591.1 is continued in Section 10450(a) without substantive change. The second sentence is continued in Section 10404 without substantive change. See Sections 10402 and 10403 (defining "full independent administration authority" and "limited independent administration authority"). The third sentence is replaced by Section 10405. See the Comment to Section 10405.

Subdivision (b) is superseded by subdivision (b) of Section 10450. See the Comment to that section. Subdivision (c) is continued without substantive change in subdivision (a) of Section 10451. Subdivision (d) is superseded by subdivision (b) of Section 10451. See the Comment to Section 10451. The requirement of subdivision (d) that the clerk set the petition for hearing is continued in Section 1285, which is a general provision. Subdivision (e) is superseded by subdivision (c) of Section 10451. See the Comment to Section 10451. Subdivision (f) is continued without substantive change in subdivision (a) of Section 10452. The first portion of subdivision (g) is continued without substantive change in the first sentence of subdivision (b) of Section 10452. The last portion of subdivision (g) is superseded by subdivision (c) of Section 10452. See the Comment to Section 10452.

Probate Code § 591.2 (repealed). Manner of administration; court supervision

Comment. The first sentence and the first portion of the second sentence of subdivision (a) of former Section 591.2 are continued without substantive change in subdivision (a) of Section 10500. The portion of the second sentence defining "court supervision" is continued without substantive change in Section 10401. The portion of subdivision (a) stating the matters that require court supervision is superseded by Section 10501. See the Comment to Section 10501.

The first sentence of subdivision (b) of former Section 591.2 is continued in subdivision (b) of Section 10500 without substantive change.

The second sentence of subdivision (b) of former Section 591.2 is omitted as unnecessary. If the personal representative does not take the proposed action under independent administration authority, the action is taken under the procedures that apply where the personal representative does not have independent administration authority, and, except as provided in Sections 10301 to 10303, inclusive, the requirement that notice of sale be published must be satisfied. See the Comment to Section 10500.

Probate Code § 591.3 (repealed). Advice of proposed action

Comment. Paragraph (1) of subdivision (a) of former Section 591.3 is superseded by the first sentence of subdivision (a) of Section 10580. See the Comment to that section. The portion of paragraph (2) of subdivision (a) defining "advice of proposed action" is omitted as unnecessary since the term "notice of proposed action" is uniformly used in the new statutory provisions. The remainder of paragraph (2) of subdivision (a) and the introductory clause of subdivision (a) are superseded by Section 10581. See the Comment to that section.

The introductory clause of subdivision (b) of former Section 591.3 is superseded by Sections 10510 and 10530. Paragraph (1) of subdivision (b) is continued without substantive change in Section 10513. Paragraph (2) is continued without substantive change in Section 10516. Paragraph (3) is superseded by Section 10536. See the Comment to that section. Paragraph (4) is continued without

substantive change in subdivision (b) of Section 10535. Paragraph (5) is superseded by Section 10532. See the Comment to that section. Paragraph (6) is continued without substantive change in Sections 10514 and 10533. See the Comments to those sections. Paragraph (7) is continued without substantive change in Section 10534. Paragraph (8) is superseded by Sections 10511 and 10512. See the Comment to Section 10511. Paragraph (9) is continued without substantive change in Section 10518. Paragraph (10) is continued without substantive change in Section 10515. Paragraph (11) is continued without substantive change in Section 10519.

Subdivision (c) of former Section 591.3 is continued in Section 10582 without substantive change. Subdivision (d) is continued in Section 10583 without substantive change.

Probate Code § 591.4 (repealed). Notice of proposed action

Comment. The first sentence of former Section 591.4 is restated without substantive change in subdivision (a) of Section 10586. The second, third, and fifth sentences are superseded by Section 10585. See the Comment to Section 10585. The fourth sentence is restated without substantive change in subdivisions (b) and (c) of Section 10586.

Subdivision (b) of former Section 591.4 is continued without substantive change in Section 10591.

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

Comment. Subdivision (a)(1) of former Section 591.5 is continued in Section 10588 without substantive change. See the Comment to that section. Subdivision (a)(2) is continued without substantive change in Section 10587, but the former provision is made applicable to any case where notice of proposed action is given, whether or not the proposed action is one for which notice is required. See the Comment to Section 10587. The first sentence of subdivision (b) is continued without substantive change in subdivision (a) of Section 10589. The second sentence of subdivision (b) is superseded by Section 10592. See the Comment to that section. Subdivision (c) is continued in Section 10591 without substantive change. The substantive effect of the first sentence of subdivision (d) is continued in subdivision (d) of Section

10590. The remainder of subdivision (d) is replaced by subdivisions (a), (b), and (c) of Section 10590. See the Comment to Section 10590. Subdivision (e) is continued without substantive change in subdivision (c) of Section 10589.

Probate Code § 591.6 (repealed). Independent administration powers

Comment. The introductory clause of former Section 591.6 is superseded by Sections 10502 and 10551. See also Sections 10510, 10530, and 10550. See also the Comments to Sections 10502 and 10551.

The portion of subdivision (a) of former Section 591.6 granting the power to manage and control property is continued without substantive change in Section 10531. The portion granting the power to "exchange" is superseded by Sections 10513 and 10536. The portion granting the power to "convey" property is superseded by Section 10556. See the Comments to Sections 10531 and 10556. The portion granting the power to "divide" and "partition" is not continued. But see Section 10551 (power to institute, maintain, and defend actions and proceedings). See also the Comment to Section 10531. The phrase "for cash or credit" is continued in Section 10503. The portion granting the power to lease is superseded by Section 10535. See the Comment to that section. The portion granting the power to grant options to purchase real property is continued without substantive change in Section 10516.

The portion of subdivision (b) of former Section 591.6 relating to the power to invest money in deposit accounts has been omitted as unnecessary. The personal representative may make these investments under Section 10551 (grant of powers that any personal representative may exercise without court supervision). See the Comment to that section. See also the Comment to Section 10511. The portion granting the power to invest in securities as provided in Section 16430 of the Government Code is continued without substantive change in Section 10511. The portion granting the power to invest in any manner provided by the will is continued without substantive change in Section 10512.

Subdivision (c) of former Section 591.6 is continued without substantive change in Section 10515. Subdivision (d) is superseded by Section 10563. See the Comment to that section. Subdivision (e) is

continued without substantive change in Section 10564. Subdivision (f) has been omitted as unnecessary in view of Section 10551. See the Comment to that section.

The substantive effect of subdivision (g) of former Section 591.6 is continued in Sections 10536 and 10562 with the expansion of the scope of the provision to cover "securities" instead of "stock." See the Comments to those sections.

Subdivision (h) of former Section 591.6 is continued without substantive change in Section 10561. Subdivision (i) has been omitted as unnecessary in view of Section 10551. See the Comment to that section.

The portion of subdivision (j) of former Section 591.6 relating to claims against the estate is continued without substantive change in Section 10552. See the Comment to that section. The portion relating to instituting and defending actions and proceedings is continued without substantive change in Section 10553. See the Comment to that section. The portion relating to compromises and releases is superseded by Section 10554. See the Comment to that section.

Subdivision (k) of former Section 591.6 is continued without substantive change in Section 10557. Subdivision (l) is superseded by Section 10533. See the Comment to that section. Subdivision (m) is continued without substantive change in Section 10534. Subdivision (n) is continued in Section 10520, but notice of proposed action is required to make a disclaimer. See the Comment to Section 10520. Subdivision (o) is continued without substantive change in subdivision (a)(1) of Section 10537.

Probate Code § 591.7 (repealed). Revocation of independent administration authority

Comment. Former Section 591.7 is continued in Section 10454 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. The provision of former Section 591.7 requiring that the clerk set the petition for hearing is continued in Section 1285, which is a general provision.

Probate Code Section 591.8 (repealed). Form of advice of proposed action

Comment. Former Section 591.8 is superseded by Section 10585 and by the second sentence of subdivision (b) of Section 10587. See the Comment to Section 10585.

Probate Code Section 591.9 (repealed). Sales of property

Comment. Subdivision (a) of former Section 591.9 is continued without substantive change in Section 10503. Subdivision (b) is superseded by Section 10453. See the Comment to that section.